

1502
THE
SOLICITOR'S
Compleat Guide

In the PRACTICE of the
HIGH COURT of CHANCERY.

S H E W I N G

The whole modern Practice of the Court, from the Issuing of the *Subpœna* to the final *Decree*, arranged in an intire new, familiar, concise, and comprehensive Manner, so as to be a perfect Assistant to the young Clerk, as well as an Aid to the old Practitioner; Illustrated with apt Points determined on each particular Head, selected from the best Authorities.

To which is added

Forms of all necessary Precedents that may be wanted by a Practitioner in the Course of a Suit;

AND ALSO,

A compleat Table of Fees due to the particular Officers of the Court, as settled by an Order of the 28th November 1743, Temp. Lord Hardwicke.

BY A SOLICITOR OF THE COURT.

VOLUME I.

L O N D O N:

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in Lincoln's-Inn Fields; G. ROBINSON, in Pater-Noster-
Row; and E. BROOKE, in Bell-Yard.

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THE many treatises already published on this subject (and some of good authority) make it impossible for the author of the following sheets to deviate from the beaten path. Indeed the attempt might be justly deemed impertinent, was it not known that most (if not all) the Practices of this Court hitherto published are solely calculated to assist the judgment, and refresh the memory of the experienced solicitor, while the young graduate in the science is left to *time, patience* and *his own industry*, to solve mysteries, that with the aid of a little *practical intelligence* need not be the business of a day.

ALL scientific professions appear to the young pupil dark and mysterious; if he wants industry, he quits with disgust; and if he is possessed of a proper portion of diligence, it is *all* put to the test before he can divest it of its *coat of mail*, so as to profit by his assiduity. The consequence is, that more spend many fruitless years in the pursuit without effect, than are rewarded for
a 2 their

their application. The law is a science every one should have a general knowledge of, as tending to preserve his *life* and *property*; to attain that desirable end, it can't be laid down in too plain and simple a manner. These considerations first induced the author of this work to attempt the arduous task; how he may have succeeded must be left to the candor of those for whose use this work was chiefly compiled.

THE Epitomy of the Practice of this Court has been long admired for the *simple*, *concise* and *comprehensive* manner in which the same is digested; nay, the many editions it has undergone fully confirm the remark. The author of these sheets has adopted that book for his plan, on a more enlarged scale, with some alterations, which he hopes and flatters himself will make this work still more intelligent. For example:

THE reader will here find the practice of the court shewn in the manner it occurs in the real execution of the business, with apt and suitable information to every executive branch that falls to the province of the young solicitor or his clerk to perform.

As to the larger precedents, as *bills* and *answers*, the smallness of the work would not admit

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admit of a great variety—but there are some, and those explained in their distinct parts in such a manner, as to give the reader the most perfect idea of the mode of drawing the same.

As to smaller precedents, as *affidavits*, *petitions*, *notices*, &c. this work may boast an equal variety with any now extant on this subject; and further, where any executive business occurs thereon, the same is explained in the most full and explicit manner.

In this work is given (more fully than in any book now extant) a table of the fees due and to be demanded by each particular officer of the court, for business done in their respective departments, as settled *per order*, dated 28th November 1743, *Temp. Lord Hardwicke*.

THE usefulness of this addition seems to require little comment, as thereby the young clerk and solicitor will be enabled to know, what money to carry out with him to the respective offices, and to detect imposition or mistake.

AFTER all that can be said in favour of these volumes, they must stand or fall by
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their utility and service. The author leaves them to the notice and perusal of the profession, whose candor, he trusts, will allow for all inaccuracies and mistakes. His intention was a wish to serve the younger branches of the profession; if that purpose is any way accomplished, his utmost desire is fulfilled, and he requires no further reward for all his labour, than the thought that he has contributed his *mite* towards the assistance of a profession, to which, not only as a brother, but as a man, he has the highest veneration.

*Gray's-Inn,
24th June 1776.*

THE
SOLICITOR'S
COMPLEAT GUIDE

In the PRACTICE of the
HIGH COURT of CHANCERY.

The Origin and Jurisdiction of the Court.

ALL other courts, the parliament excepted, are inferior to the high Court of Chancery, which is divided into two branches, viz. *the Petty Bag side*, which is a common law court, wherein the proceedings are according to the laws and statutes of the realm; and *the Equity side*, wherein the Chancellor proceeds according to equity and good conscience.

The Petty Bag hath been a court of record *Petty bag*. time out of mind, as appears from the best authorities. It holds pleas of *scire facias* for repeal of letters patent at the suit of a former patentee, when granted to several persons for the same matter; but the King may have a *scire facias* to repeal his own grant, when contrary to law, or obtained by a false suggestion. It holds pleas of Petitions for a subject to be restored to
B lands

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lands which he shews to be his right; or to prove that an inquisition taken of lands and goods is defective and wrong; a *scire facias* may issue on recognizances in this court, and execution on a statute staple; and it holds plea of all personal actions by or against any officer or minister of the court, and by different statutes of several offences and causes named therein.

Out of this court issue all *original writs*, commissions of charitable uses, bankruptcy, sewers, ideots, lunatics, that pass under the great seal; it may also hold plea of *trespass* or *debt*.

The process is under the great seal, and the proceedings are not inrolled, but are filed in this office. If the parties proceed to issue, this court cannot try the cause by a jury, but the record must be delivered into the King's Bench to be tried there; and after trial, it is to be remanded into chancery, where judgment is to be given. In case a demurrer in law should arise in the course of the suit, the same shall be argued and determined in chancery.

Equity side. The *Equity side* of this court most probably began in the reign of *Edward* the third, and as it rather regards the intention than the words of the law, is of excellent use in granting relief in cases wherein the subject is without remedy in the law courts; and though equity in its first principles could not controul the maxims of the common law, yet now every matter that proves inconsistent with the intention of the legislature, or is contrary to natural justice, may be relieved here.

This court relieves all matters of fraud and accidents not remediable at common law. Thus it will compel a discovery of goods in the hands of a third person to subject them to a judgment; relieves obligors, mortgagors, &c. against penalties, forfeitures upon statutes, bonds, mortgages,

gages, &c. where the debtor, though willing to pay the debt or duty, hath been disabled so to do from some extraordinary casualty; all breaches of trust and confidence concerning uses are also properly cognizable here. This court also affords relief when *unreasonable* engagements or *without consideration* have been made; and where one man has undertaken a charge for the benefit of a number, will make others contribute their proportional share; it compels persons to perform their agreements; settles the general customs of a manor; relieves copyholders against the arbitrary proceedings of the Lord; ascertains their fines; makes decrees for a liberty of common, fishing, &c. for inclosures to be made of common lands, or for inclosing lands in a parish, compelling the minister to consent on an equivalent where others agree; for recovery of money or land given to charitable uses and misapplied; directs a writ of *partition* where lands, the property of different persons, are intermixed; nominates guardians for minors; compels executors and others to give security and interest for monies in their hands to the prejudice of the trust; directs the performance of, and on just grounds sets aside wills; confirms titles to estates, where the deeds and papers are lost, and will quiet a voluntary devisee in the possession of his lands; rectifies conveyances defective through fraud or mistake; obliges persons to settle accounts; prevents the bar of an action by the statute of limitations, &c. &c. and upon interruption of its decrees, issues an attachment.

It will not take cognizance of any suit under 10 *l.* value, except in cases of charity; nor under the value of 40 *s.* *per annum* in lands, unless for a rent service. It will restrain other courts that exceed their jurisdiction, and re-

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move the suit to itself by *certiorari* ; but though it has a power to examine the judgments and sentences of other courts, it will not encroach on their peculiar jurisdiction ; nor will it assist a forfeiture, or relieve in matters cognizable by *quo warranto* or *mandamus* in *K. B.*

The court of course punishes its own officers and ministers, and all other persons who disobey its rules and orders.

Its foreign jurisdiction.

As chancery acts on the person, not the matter, it has a jurisdiction in foreign parts under the crown of *Great Britain*, provided the defendant be served with process here. It will also decree a joint-tenancy of lands in *Ireland*, though it cannot issue a commission to divide lands which lie in that country ; and in marine contracts has a joint jurisdiction with the admiralty.

How far it interferes with the exchequer.

A bill may be brought in this court, though a bill brought in the exchequer for the same thing has been dismissed ; where a mortgagee files a bill in the exchequer, to foreclose the equity of redemption of mortgaged premises, a bill may be brought in this court to redeem by the mortgagor ; and a decree in the exchequer, though confirmed by the house of lords, may be reversed by a bill brought in this court.

Jurisdiction in matters cognizable in the inferior courts.

This court has a jurisdiction over inferior courts of equity, which can only decree between parties dwelling within their jurisdiction, and for lands situated therein ; wherefore if either party lives out of the limits of the said inferior court, the court of equity may take cognizance thereof.

It has a joint power with the spiritual court in allowing alimony ; and in many cases their judgments are subject to the court of equity. A suit depending in the spiritual court cannot be pleaded in bar, where an infant legatee
sueth

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fueth in the court of equity. A bill may be brought in this court for a distribution of an intestate's personal estate; and an account of such estate may be decreed, notwithstanding a previous account and distribution decreed in the ecclesiastical court. Where the probate of a will, bequeathing a personal estate, hath been fraudulently obtained, it must be reversed in the spiritual court before any redress can be obtained in equity.

LORD HIGH CHANCELLOR OF GREAT BRITAIN.

Henry Baron Apsley, Great Russel Street, Bloomsbury.

The duty of the chancellor is to see that every thing relative to this court be managed agreeable to equity, justice, and his orders; and he has power to hold plea both in and out of term in the Petty Bag and Equity. By virtue of his office, he pronounces the cause of the house being called together at the opening of every sessions of parliament, being speaker of the house of lords, and as a privy councillor has a right to be present whenever the privy council meet. He is conservator of the peace throughout all *England*, and appoints the justices of the peace and *quorum* by commission.

It is his duty also to visit all hospitals and free chapels of the King's foundation. He receives and keeps all vacant bishoprics and extinct baronies; and presents to all benefices of or under 40 marks in the King's books, where he is patron in right of his crown; but not to those which the King possesses by a collateral title, as by lapse, &c. though even these must pass under the great seal. He has the disposal and ordering of the King's chaplains, and may

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keep three chaplains, who are thereby entitled to purchase licences to hold two benefices with cure of souls.

The Lord Chancellor may pass any matter relating to himself under the seals, without paying any fees; and in case of sickness or extraordinary business, may call in the aid of some of the judges, who in his absence may pronounce interlocutory orders and decrees.

Since the statute 1st *William and Mary*, this high office has been several times in commission, under the title of Lords Commissioners, and Lord Keeper of the great seal of *Great Britain*, with the same powers.

MASTER OF THE ROLLS.

Officers of
the Court.

Sir Thomas Serwell, Knight, Roll's Yard, Chancery Lane.

This high officer is chief of the masters in chancery, as well as principal clerk of the Petty Bag office, and is a judicial officer of the court of chancery; for besides what he does as assistant to the Chancellor when present, or as his deputy in his absence, many causes are set down before him to hear and decree, which he usually does in the presence of one or more masters in chancery, either in court, at his own house, or in the rolls chapel on appointed days; and all his orders and decrees so made are drawn up and entered as made by the court, subject only to be discharged or altered by the Chancellor.

He is also the keeper of all records, judgments, sentences, and decrees given in chancery, and by virtue of his office, he is a general conservator of the peace throughout the kingdom. He nominates the six clerks in chancery; the clerks of the Petty Bag office; the

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the two chief examiners; the usher of the court of chancery, &c.

MASTERS IN CHANCERY.

Sir *Thomas Sewell*, Knight, Chief of the Masters in Chancery, *ex officio*.

Thomas Anguish, Esq; *Great Russel Street*, *Bloomsbury*, Chambers No. 10, *Symmond's Inn*.

— *Leeds*, Esq; *Boswel Court*, *Carey Street*, near *Lincoln's Inn*.

Peter Holford, Esq; *Holborn-row*, *Lincoln's Inn Fields*, Chambers No. 1, *Symmond's Inn*, *Chancery Lane*.

Thomas Harris, Esq; *Holborn-row*, *Lincoln's Inn Fields*, Chambers No. 19, *Lincoln's Inn*, *Old Square*.

John Browning, Esq; *King's Road*, *Chelsea*, Chambers No. 10, *Symmond's Inn*.

William Graves, Esq; No. 2, *Tanfield Court*, *Temple*, Chambers No. 10, *Symmond's Inn*.

Samuel Pechell, Esq; *Bloomsbury Square*, Chambers No. 4, *Symmond's Inn*.

John Eames, Esq; *Bedford-row*, Chambers No. 4, *Symmond's Inn*.

Thomas Cuddon, Esq; *Great Ormond Street*, Chambers No. 6, *Symmond's Inn*.

Edward Montague, Esq; *Holborn-row*, *Lincoln's Inn Fields*, Chambers No. 7, *Symmond's Inn*.

Robert Pratt, Esq; No. 7, *King's Bench Walks*, *Temple*, Chambers No. 5, *Symmond's Inn*.

These officers eleven in number, besides the chief master, are assistants to the Chancellor and Master of the rolls, and sit in court by turns, commonly two at a time. References concerning matters of account, practice, &c. are by the court made to them, on which they make their report; they also administer oaths,

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take affidavits, acknowledgements of deeds, recognizances, &c.

They attend for the dispatch of business in term at the public office in *Symond's Inn* from five in the afternoon till eight o'clock in the evening, and out of term from eleven to one o'clock at noon, (*Saturdays* excepted) and afterwards are to be met with at their respective houses or chambers.

Masters extraordinary in Chancery, at law: how appointed.

A certificate to the following effect must be signed by three justices of the peace or barristers at law:

To the Right Honourable the Lord High Chancellor of Great Britain.

WE whose names are hereunto subscribed or set, viz. *J. K.* of *Ec.* *A. G.* of, *Ec.* and *S. R.* of, *Ec.* being three of his Majesty's justices of the peace for the said county, (or three barristers at law, as the case may be), DO HUMBLY CERTIFY to your Lordship, that *A. C.* of, *Ec.* is a person well qualified to be a master in chancery for taking of affidavits in the said county; and that there is occasion for a master extraordinary in the said place where he dwells, there being no one residing near that place; and that the said *A. C.* is a person well affected to his present Majesty and government. Witness our hands, &c.

J. K.

A. G.

S. R.

It must be carried to one of the chancellor's secretaries, who procures his Lordship's *flat* thereon; it is then delivered to the clerk of the crown, who makes out the appointment. The fees of this business amount to near 7*l.* The new master extraordinary must, if in town, within

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in a month after the date of his commission, in court, take the oaths of allegiance and supremacy. If he resides in the country, the business is done by commission, in which case the expence amounts to about 9 l.

ACCOMPTANT GENERAL.

Thomas Anguish, Esq;

His duty is to do all such things relating to the delivery of the suitors money into the bank, and to take the same out by order, and keep accounts with the bank, as used to be done by the masters and usser of the court. Mortgages taken by the order of this court for the benefit of suitors, wherein the particular trust thereof is to be specified, must be taken in the name of the accomptant general; who is not to meddle with the actual receipt of the suitor's money or effects, but is only to keep the account with the bank; and the bank is to be answerable for all money received by them, and not the accomptant general. stat. 12 Geo. 1.

His Deputy, } *Mr. Richard Nowell, at the accomptant general's office, No. 10, Symmond's Inn.*

CLERK OF THE CROWN.

John Yorke, Esq;

His Deputy, } *Charles Frewen, Esq; office for business, Roll's Yard, Chancery Lane.*

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PROTHONOTARY.

The Reverend *Charles Willes*,
Robert Wilmot, Esq;
 Their Deputy, Mr. *John Lancaster*.

SIX CLERKS IN CHANCERY.

Samuel Reynardson, ——— *Sewell*, *William*
Mitford, *Christopher Zincke*, *R. Woodford*,
Neb. Winter, Esquires.

Their duty is to transact and file all proceedings in this court by bill and answer; to issue pardons for chance medley; patents for ambassadors, sheriffs, and some others; to sign all office copies of proceedings, to be read in court, and certificates; and two of them attend on the court in term by turns, and read the pleadings. They execute the office business by deputy.

Their Deputies, } Messrs. *Dalton*, *Trollop*, *Nicolls*,
 } *Wainwright*, *Townshend* and
 } *Greenbill*, at the six clerks
 } office, *Chancery Lane*. Hours
 } of attendance for office bu-
 } siness from nine in the morn-
 } ing to two at noon, and from
 } from four in the afternoon
 } till eight.

SIXTY SWORN CLERKS IN CHANCERY.

In Mr. *Reynardson's* Division.

Messrs. *John Coleman*, *F. Douce*, *F. Dalton*,
H. Leigh, *S. Thoyts*, *F. Harris*, *John Sea-*
man.

In Mr. *Sewell's* Division.

Messrs. *Richard Palmer*, *Mor. Robinson*, *Jos.*
Hill, *Henry Barker*, *William Michael Lally*,
William Trollop, *Abraham Hilton*, *Francis*
Mitchell, *William Hobbs*.

In

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In Mr. Mitford's Division.

Messrs. *N. Templeman*, ——— *Mitford, Jos. Nicolls, Sol. Fell, Geo. Bowles, John Cotterel, Thomas Handley, Darcey Tancred.*

In Mr. Zincke's Division.

Messrs. *Robert Smith, Thomas William Baynard, R. Chester, R. Wainwright, Charles Frewen, Thomas Shepperd.*

In Mr. Woodford's Division.

Messrs. *Geo. Townshend, Fra. Ja. Scroope, Hen. Gale, Wm. Meares, Elb. Woodcock, R. Bristowe, Thomas Marriot, — Gape.*

In Mr. Winter's Division.

Messrs. *John Radcliffe, Thomas Metcalfe, J. Greenhill, E. Boutflower, Herb. Croft, Edward Donnithorne, William Benton, George Birch, Geo. Levinge, Delme Vanheythusen.*

They make out all writs and all process, except subpœnas, on the equity side of this court, in such causes as they are respectively retained in; they make copies for their clients of all records relating to causes in this branch of the court; ingross bills and answers, if required; attend the court and masters on matters referred to them; and make copies of all depositions taken by commission in the country. They attend both in term and vacation at the office in *Chancery Lane* every day, holidays excepted.

N. B. Solicitors may chuse their own clerks in court: *per cur.*

RECORD KEEPER.

J. H. Bateman, Esq;

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PRINCIPAL REGISTER.

His Grace *Charles Duke of Saint Albans.*

LORD CHANCELLOR's REGISTERS.

Richard Howard and John Dickens, Esquires,
their office in *Symond's Inn.*

MASTER OF THE ROLLS's REGISTERS.

Benjamin Green and Stephen Martin Leake,
Esquires, ditto.

ENTERING REGISTERS.

Messrs. *Fra. Bowyer and Fra. Dickens,* ditto.

The registers by turns sit in court and take notes of all orders and decrees made, and accordingly draw up the orders which are to be entered with the entering registers, after they have been passed by a register. Rules and attachments are also entered in this office; reports from the masters on references are filed, and all exceptions thereto are here taken. They by *Stat. 12 Geo. 1.* certify to the master, what security belonging to the suitors of the court is to be delivered out, together with the numbers, dates, and sums thereof, and the name of the cause, and likewise certify when stock is to be transferred to suitors, and when same is paid out of the bank; the register must counter sign the chequer note for payment.

CLERK OF THE REPORTS.

Thomas Elde, Esq; at the Register Office
Symmond's Inn.

PATEN.

PATENTEES OF THE SUBPŒNA OFFICE.

William Courtney and J. Benson, Esquires.

Their Clerk, } *Mr. Thomas Ludby, office in
the Rolls Tavern Yard, Chan-
cery Lane.*

All writs of Subpœna are made out here.

REGISTER OF AFFIDAVITS.

*Edward Woodcock, Esq; No. in Lincoln's Inn,
New Square.*

His Deputy, } *Mr. Paul Humphreys, Affidavit
Office, No. 10. in Symmond's
Inn.*

He files and registers affidavits, and makes copies of the same, which must be signed by himself or deputy, and issues certificates when required.

EXAMINERS.

Edward Northey and John Spooner, Esq;

Deputies to Edward Northey, Esq;

*Messrs. Richard Guy, Alexander Williams, and
J. H. Bateman.*

Copying Clerks, } *William Langley, Jonathan
Langley, William Douce, and
William Butcher.*

Deputies to John Spooner, Esq;

Messrs. J. Worth, J. Brown, N. Edmonds.

Copying Clerks, } *John Morgan, John Willes,
James Heatley, and J.
Smith.*

The duty of the examiners, or their deputies, is to examine witnesses, first sworn by a
master

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master on interrogatories, to take their depositions, and make out copies thereof, and of the interrogatories when not by commission, to give certificates, and attend the court with deeds or writings in their custody, and to keep private in the office all copies of depositions till after publication. Their office is in the *Rolls Yard, Chancery Lane*, where they constantly attend.

CLERKS OF THE PETTY BAG.

Henry Thomas, Charles Deaves, and Thomas Harrison, Esquires.

Their Deputy, } Mr. Jacob Bannister, office in
the *Rolls Chapel Yard*.

Their duty of office is to make out writs of summons to parliament, and commissions of assessing subsidies and taxes, *conge d'elire* for bishops, patents of customers, gaugers, controllers, &c. *liberates* on extents of statutes staples, and recovery of recognizances forfeited, and all *elegits* thereon. They file all offices found *post mortem*, enter all pleadings in chancery relating to the validity of any patent or other thing under the great seal, which are according to the course of the common law. All disputes concerning the acknowledgement of any deed taken in chancery are to be here prosecuted; and all statutes and recognizances made before any officers of this court deputed to take the same, are transmitted hither; and all suits for or against any privileged person of this court, can be prosecuted only in this office.

CLERK

CLERK OF THE INROLLMENTS.

Henry Harmood, Esq;

His Deputy, } *Humphrey Hackshaw, Esq; office*
 } *in the Chapel of the Rolls.*

CORPORATION OF CURSITORS.

Principal, Thomas Gataker, Esq;

Assistants.

F. R. Buxton and Nic. Brown, Esquires.

Cursitors.

R. Woodford, Hugh Valence Jones, Thomas Lamb, Thomas Stevens, Charles Frewen, Edward Woodcock, Jos. Walker, John Hingson, Elb Woodcock, Lawrence Cottam, Ralph Allen, Daniel Hahn, Valentine Henry Allot, Henry Peele, Thomas Lloyd, Robert Appleyard, ——— Wellard, Robert Nuthall, Aug. Greenland, Thomas Hammond, and George Hill, Esquires.

Bagbearer, Mr. William Warren.

The cursitors office is in *Chancery Lane*; opposite *Lincoln's Inn Gate*, where all original writs in chancery are made out, and constant attendance given every day, holidays excepted.

CLERK OF THE ROLLS CHAPEL.

Henry Rooke, Esq;

His duty is to search for deeds, make out copies of the same, and to deliver parchment of due proportion to the under clerks for in-rolling of decrees.

Records

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Records down to 1483 are kept in the *Tower*; those of a later date in the *Rolls Chapel*, where the said clerk keeps his office.

SERJEANT AT ARMS.

Richard Jephson, Esq;

His duty is to carry the mace before the Chancellor, and to take into custody persons standing in contempt of the court.

WARDEN OF THE FLEET.

John Eyles, Esq;

THE TERMS.

Michaelmas Term begins on the 6th of *November*, (if not *Sunday*), otherwise on the 7th, and ends on the 28th of *November*, (if not *Sunday*) then on the 29th. It hath four returns.

For the writ.

For the label.

Michaelmas term.	1	From the day of St. Michael in three weeks next ensuing.	In three weeks after St. Michael.
	2	From the day of St. Michael in one month next ensuing.	In one month after St. Michael.
	3	On the morrow of All Souls next ensuing.	On the morrow of All Souls.
	4	On the morrow of St. Martin next ensuing.	On the morrow of St. Martin.

Hilary

Hilary Term begins the 23d of *January*, (if not *Sunday*) otherwise on the 24th, and ends on the 12th of *February*, (if not *Sunday*) then on the 13th. It hath four returns.

For the writ.

For the label.

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| <p>1 In eight days next ensuing after St. Hilary.</p> <p>2 In fifteen days next ensuing after St. Hilary.</p> <p>3 On the morrow of the Purification of the blessed Virgin Mary next ensuing.</p> <p>4 In eight days next ensuing after the Purification of the blessed Virgin Mary.</p> | <p>In eight days after St. Hilary term. Hilary.</p> <p>In fifteen days after St. Hilary.</p> <p>On the morrow of the Purification.</p> <p>In eight days after the Purification.</p> |
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Easter Term begins the *Wednesday* fortnight after *Easter Day*, and ends on the *Monday* before *Whitsunday*. It hath five returns.

For the writ.

For the label.

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|---|---|
| <p>1 In fifteen days after Easter next ensuing.</p> <p>2 From the day of Easter next ensuing in three weeks.</p> <p>3 From the day of Easter next ensuing in one month.</p> <p>4 From the day of Easter next ensuing in five weeks.</p> <p>5 On the morrow of the Ascension of our Lord next ensuing.</p> | <p>In fifteen days after Easter term, Easter.</p> <p>In three weeks after Easter.</p> <p>In one month after Easter.</p> <p>In five weeks after Easter.</p> <p>On the morrow of the Ascension.</p> |
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Trinity

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Trinity Term begins the *Friday* after *Trinity Sunday*, and ends on the *Wednesday* fortnight after. It hath four returns.

	<i>For the writ.</i>	<i>For the label.</i>
Trinity term.	1 On the morrow of the <i>Holy Trinity</i> next ensuing.	On the morrow of the <i>Trinity</i> .
	2 In eight days next ensuing after the <i>Holy Trinity</i> .	In eight days after <i>Trinity</i> .
	3 In fifteen days after the <i>Holy Trinity</i> next ensuing.	In fifteen days after <i>Trinity</i> .
	4 From the day of the <i>Holy Trinity</i> in three weeks next ensuing.	In three weeks after <i>Trinity</i> .
	Immediately after the receipt of this writ.	Immediately.

Days for hearing of Causes, Motions, &c. before the Lord Chancellor and Master of the Rolls.

In Term.

Causes. Every *Monday*, *Tuesday*, *Wednesday*, and *Friday* in term, are days for hearing causes at *Westminster* by the Lord Chancellor.

Seal-days. Every *Tuesday*, *Thursday* and *Saturday* in term time are seal-days.

The first and last days of the term are days for sealing writs and motions only.

Motions. Every *Thursday* in term is a day for motions, except in the *first* or *last* week of the term, and then it is a day for causes.

All the days in term, when the court sits, are days for common motions, which are moved after

after the causes are heard, just before the rising of the court.

Vacation.

In the vacation, the general seal-days only *Motions* in as appointed by the Lord Chancellor, are days *the vacation.* for motions.

No motions are heard *after* the last general seal.

Every *Saturday* in term is a day for rehear- *Rehearings.* ings.

Wednesdays and *Fridays* in the afternoon in *Exceptions,* term, Lord Chancellor sits in *Lincoln's Inn Hall* *pleas, and* on exceptions, pleas and demurrers. *demurrers.*

The next day after the *last* seal, both *before* *Petitions.* and *after* the term, is usually appointed for petitions.—There are also other days of petitions usually appointed by the Lord Chancellor.

AT THE ROLLS.

In Term.

Every *Monday, Tuesday, Thursday* and *Satur-* *Causes,* *day* in term, are days for hearing causes at the rolls by the master of the rolls in the after- noons.

The second *Saturday* in term is always a day *Pauper-* for hearing pauper-causes at the rolls. *causes.*

After Term.

The first week *after* the term, the master of the rolls sits all the mornings on causes, and to- *Causes in* wards the third seal, in the afternoons. *vacation.*

There is also a day of petitions at the rolls *Petitions.* after the term, which is appointed by his honour.

The next morning after the term, motions *Motions,* are allowed to be made at the rolls.

By the Lord Chancellor.

G E N E.

GENERAL DIRECTIONS

For commencing and prosecuting Suits in this Court.

Suits in Chancery are usually brought for matters not remediable at common law, and are commenced, prosecuted, and defended by parties in their own names, except when either of them is an *infant, lunatic, an idiot or a feme covert*; they may be brought either in the parties own right, in the right of another, or in both their rights; and persons who sue in their own right must be careful that they do not fall under any legal disability, as the same may be pleaded in bar. All interested persons are to be made parties to the suit, or the defendant may demur to the bill; or should he not, the court will not make a decree therein; or should a decree happen to be made, the same may be reversed; and though not reversed, none but the parties thereto, or persons deriving their claim from them, can be affected thereby.

By *stat. 5 Geo. 2.* where a defendant cannot be found, and it is believed he absconds, to avoid being served with process, on affidavit thereof, the court will appoint him a day to appear to the plaintiff's bill, which order is to be inserted in the Gazette, read in the parish church of the place where the defendant last resided, and stuck up at the Royal Exchange; and on the defendant's neglect to appear to the bill at the limited time, the court will take the bill *pro confesso*. In this affidavit it must be stated by whom the deponent received such information.

The complainant before answer put in, may by motion obtain leave to amend his bill, and
add

add fresh parties ; and also the court will allow the plaintiff to add parties any time before publication where no plea or demurrer, without costs ; and where the addition or amendment is small and does not require defendants to take a new copy of the bill, or give any further answer thereto, the plaintiff may amend the defendant's office copy ; and the plaintiff may even obtain an order to add parties to his bill at any time before the hearing of the cause ; and when this is the case, so much of the cause as relates to the new defendants by the amendments in bill, must be heard by bill and answer.

Complainant may move to amend his bill after a demurrer, if not set down to be argued, on paying 20 s. costs ; but if the same is set down, he must pay the costs of the demurrer before he can move for leave to amend. No bill can be amended without an order of court, which may be obtained by petition or motion ; where costs are incurred, the costs of the former proceedings must be paid before such new bill can be filed.

If a defendant's answer is insufficient, and plaintiff excepts thereto, and master reports same insufficient, complainant may by petition or motion amend his bill without costs, suggesting that the answer has been reported insufficient, and praying that the defendant may answer the exceptions and amendments at the same time, and likewise if complainant excepts, and defendant submits to answer, the bill, if needful, may be amended without costs.

Complainant may on motion strike a defendant out of his bill before any of the parties have answered ; as also where a defendant answers and disclaims, or appears disinterested ; but after answer not without costs ; a defendant indeed may be struck out at any time before hearing, but after appearance and answer, not
without

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without costs. A special order of court must be obtained to strike a complainant out of a bill before hearing, but in that case the other complainants must be sufficient to answer the costs.

When a defendant in contempt puts in an insufficient answer, the complainant is not obliged to begin his process *de novo*, but may proceed from the last step taken.

Against
peers.

If the defendant is a peer, the Chancellor's letter *missive* for his appearance must be petitioned for, and when delivered to the defendant, must be accompanied with an office copy of the bill, signed by one of the six clerks or his deputy; and on his non-appearance thereto, a subpœna may then be taken out against him; and should he still continue in contempt, complainant may move for an order to shew cause in eight days after personal service thereof, why a sequestration should not issue, which accordingly issues on his further contumacy.

Members of
parliament.

If a bill be against a member of parliament, an office copy of the same signed as above must be given him with the subpœna, for a member is not obliged to pay for or take out any other copy of such bill on his appearance.

Where a defendant refuses to answer, and stands out the several processes of contempt, the bill will be taken *pro confesso*, and the court will decree accordingly, but the defendant must have entered his appearance, or have been in custody on some of the processes of contempt; if the defendant has not appeared, the court will direct a sequestration against his real and personal estate until he purges his contempt.

If defendant's demurrer be over-ruled, and he refuses to answer, the court will take the bill *pro confesso*.

It is sufficient for a quaker to put in his answer upon affirmation.

The present practice is, that when a defendant continues

continues contumacious to a sequestration, the cause must be set down for hearing, and the record of the bill produced in court, and taken *pro confesso*; but should time be granted to answer after the sequestration, though the master should report the answer insufficient, the bill is not to be taken *pro confesso*.

The court allows persons on interrogatories to purge themselves from any contempt, but never to subject themselves to one.

A motion may be made to discharge an order of court, though the party is under a contempt for disobedience of their orders.

It is an established maxim of the court, that if the person examined on interrogatories denies the contempt, the complainant may procure a commission to examine witnesses in proof thereof; and the person under contempt can name only one commissioner, and may cross examine the complainant's witnesses, but cannot examine any witnesses, unless the court on proper affidavits permits him to examine witnesses to some special points.

No suits depending in equity are discontinued by the demise of the King. *Stat. 7 Ann.*

S U B P Œ N A.

This writ is the first and leading process of the court to bring in the party to answer. The *ordinary return* of this writ is at a day certain within the term, the *extraordinary return* immediately and in vacation. If it is required to be returnable immediately, leave of court must be obtained by petition or motion, on affidavit that the party lives in town, or within ten miles thereof; for form of affidavit see page

N. B. Three defendants only can be put into one subpoena. A man and his wife are considered but as one defendant. It is absolutely

lutely necessary to file the bill before the return of the subpœna.

Subpœna
note.

Subpœna. *A. B. Esq;* to appear in Chancery returnable (*the return*) at the suit of *J. K.* gentleman.

P. P. Solicitor.

Carry this note to the subpœna office in the *Rolls Tavern Yard, Chancery Lane*, if one defendant you pay 4 *s.* if two 4 *s.* 6 *d.* and 6 *d.* more for every label on which the officer makes out a subpœna in the following form :

Form of
subpœna.

GEORGE the 3d, &c. To *A. B. Esq;* greeting, for certain causes offered before us in our Chancery, WE command and strictly enjoin you, that laying all other matters aside, and notwithstanding any other excuse, you personally appear before us in our said Chancery, the day of instant, wheresoever it shall then be, to answer concerning those things which shall be then and there objected to you, and to do farther and receive what our said court shall have considered in this behalf, and this you may in no wise omit, under the penalty of 100 *l.* and have there this writ. WITNESS ourself at *Westminster*, the day of in the 12th year of our reign.

Indorsement
on subpœna.

By the court, to answer at the suit of *J. K.*

Directions
for service
thereof.

The *subpœna* must be served before the return thereof. If one defendant only, cut the label off, which serve on the defendant, and at the same time shew him the body under seal, or give him the body and shew him the label; if the defendant cannot be found, leave the body at his house or lodgings with some one of the family, reserving the label; but if several defendants, some of them should be personally served

Served with labels, shewing them the body under seal, which reserve to be served on or left for the last defendant, and take a copy of the label in order to make an affidavit of the service.

A mistake in the name of any of the parties, in the return, for example, if it be taken out in term time returnable on no certain day, or in the form of the writ, will vitiate the same. *Cases of practice.*

Gilbert's Chan. Pract. page 39.

Unless subpœna served, neither party can have costs. *Ibid.*

Where several complainants, they need not all be named in the writ, but only *J. K. & al.* but all the defendants must be described by their christian and surnames. *Ibid.*

The label and body of the subpœna must agree, or it will not be good service. *Ibid.*

Service on the husband, good service on both him and his wife. *Carey 76. 111.*

Where two defendants have a joint interest in a suit in Chancery, and one lives abroad, and the other here, service on the defendant in England shall be deemed good service on both. *Nelson Chan. Rep. 103.*

A subpœna may be made returnable and served on the same day it is sealed, but in such case it must be served before the court rises. *M/s Case.*

A subpœna must be served before noon on the last day of the return, and service in the night, if before the return, or on a Sunday, if the writ is not returnable that day, is deemed good service. *Gilbert's Chan. Pract. page 43.*

Service at defendant's lodgings not good where he hath left such lodgings a year before the service. *2 Verney 369.*

On affidavit, that the authority of the court is contemned, or the party who served the process has been injured in word or deed, on motion the

C

court

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court will commit the aggressor to the *Fleet* by attachment. *Gilbert's Chan. Pract.* page 43.

No process can be served on a prisoner committed at the suit of the crown, though if he once appears, you may proceed against him. *Moseley* 237.

If a person refuses to open his door, it will be deemed good service of a *subpœna* to leave the writ under seal hanging on the door of the house, or within the windows, provided it can be proved that such writ afterwards came to the defendant's hands, and that he was in the house at that time, or had notice of it. *Carey's Rep.* 57.

Where a bill is brought to be relieved against an action at law, if the defendant cannot be found, or is in foreign parts, on affidavit thereof, court will order that service on his solicitor shall be deemed good service on the defendant.

Appearance to Writ.

Appearance. On service of *subpœna* returnable immediately, the defendant must appear within four days after service thereof, and unless he answers the bill in eight days exclusive of the day of appearance, an attachment may issue.

Defendants living twenty miles or above from *London*, have eight days after the return of the writ *exclusive* to appear in, but if served in *London*, or within ten miles thereof, are allowed only four days; and any defendant living twenty miles from *London*, may by motion or petition, obtain a commission to take his answer in the country, returnable the first return of the ensuing term, or longer on sufficient cause shewn: but persons residing in *London*, must on service of *subpœna*, answer complainant's bill within eight days, *exclusive* of

High Court of Chancery.

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of the day of appearance, on pain of attachment.

When defendant has been served with a subpoena, his solicitor directs a clerk in court to appear for him; if on appearance the bill is not entered, such clerk must stick up the following note in the six clerks office,

Enter Bill, A. against B.

And when costs preferred, he affixes to the middle pillar in the office the underwritten note,

Enter Bill, Costs preferred.

Which note the clerk in court also enters in the cost book.

If no bill filed the day after the subpoena is returnable, order your clerk in court to give note to enter costs, which is done by him in manner following: he writes a note, *Enter costs A. against B.* which he leaves with the six clerks porter, or in the hall, under the office where the cost book is kept, and it is entered in the book, which being done, and the line struck, the clerk in court makes out a bill of costs, which he carries to a master in Chancery, who taxes and signs same. The costs usually allowed in a town cause is 1 l. 3 s. 4 d. and in a country cause 1 l. 13 s. 4 d. This bill of costs must be carried and entered with the register, whose fee for entering same, is 1 s. 4 d. when you may bespeak a subpoena for costs, and no bill can be filed till such costs are paid.

This subpoena is obtained in the same manner as another subpoena, it must be personally served, and the costs demanded, which if refused to be paid on service and demand, defendant on affidavit, (see page 38) of service

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of such subpœna, and demand of costs, may move for an attachment; and if the sheriff of the county where the delinquent resides, returns on such attachment a *non est inventus*, direct your clerk in court to make out a *proclamation* against him, and in case of the like return, your clerk in court procures a commission of *rebellion*, which if returned *non est inventus*, on application to court by motion, you obtain an order for a serjeant at arms, and if he makes the same return, an order for a sequestration of the delinquent's personal estate, and the rents and profits of his real estate, till those costs are paid, and he purged of his contempt.

Method of entering an appearance with the register on an attachment for want of appearance.

Where a defendant is taken on an attachment or other process of contempt, he must in person enter his appearance at the register office, with the register, and sign a certificate, wrote by one of the entering registers, on a treble sixpenny sheet of stamped paper of his consent, that a serjeant at arms shall issue against him in case he does not appear, or put in his answer in due time. Where he is arrested in the country, distant from *London*, he may by motion or petition, obtain an order to enter his appearance with the register, by his clerk in court, who carries the order for that purpose to the register office, where the entering register writes his certificate thereon, of the defendant's appearance, by his clerk in court, which done, the defendant is discharged. But in case process regularly issued against him, he must by motion, or petition, procure an order for time to answer, and put it in accordingly, first paying the costs of such arrest, or complainant may have an order on motion or petition, for the serjeant at arms to apprehend him for his contempt.

If the defendant has been arrested and has given bail, such bond may be put in suit, and pro-

prosecuted at law against him and his bail, unless the above steps are taken in due time.

Between the *teste* and *return* of every process Cases of of contempt after subpœna sued, fifteen days practice. must intervene, unless defendant can be arrested on such process. *Gilb. & Chan. Practice, p.*

The husband must enter an appearance for his wife, by his clerk in court, or an attachment will issue against both. *Carey 76, 3.*

If the wife appears in consequence of an arrest for want of appearance, and a bail bond has been given by her, without her husband, the act shewing an acquiescence and defence of the cause, the court will neither discharge the bail bond nor appearance. *Vesey, vol. 1. Case 173.*

Appearance saves error in mesne-process only, *Vesey, vol. 1. page 386.*

One defendant not appearing, the whole line of process against him is equal to the proceeding to outlawry at common-law, and there may be a decree against the other defendants who have appeared. *Vesey, vol. 1. Case 175.*

No appearance will give a jurisdiction to a limited court. *Vesey, vol. 1. page 471.*

Appearance of a defendant obliges him to answer as many bills of the same plaintiff as he shall file. *Gilb. Chan. page 27.*

Non-appearance, where the label and body of the subpœna do not agree, is no contempt. *Ibid. 40.*

A F F I D A V I T S

Are used to certify the service of process and other matters concerning the proceedings of a cause, as also when any matter out of course is prayed by motion or petition, an affidavit must be made of the facts alledged. When used.

In all affidavits the true place of residence, and addition of every person who makes the same must be inserted; and the affidavit must set forth the matter of fact only, intended to be proved thereby, and not any matter foreign thereto.

Instructions
for drawing
and con-
ducting affi-
davits.

An affidavit of several persons, as worded, may be made either joint and several, or joint or several. The utmost care and exactness must be observed in drawing the same; they must be fairly transcribed in the same hand, without erasure or interlineations of any words of substance, or they may be refused by the master or by the proper officer, whose duty it is to file them. *Chancery Order. 28 Feb. 8 Car.*

Either party may make an affidavit, which must be sworn before a master in Chancery, at his house, chambers, or at the public office in *Symmond's Inn, Chancery Lane*, or before a master extraordinary, if the person resides above twenty miles from *London*, and such master at the bottom of every affidavit, must express the name of the town and county where taken, or it will not be filed; nor shall any affidavit be read in evidence at the hearing of a cause, though it may be used on motions. *Chancery Order. Temp. Lord Clarendon.*

Affidavits must be filed before used in court; but if they are of serving subpoenas to hear judgment, and the parties attend at the hearing, they need not be filed.

Affidavits made to ground a motion must be filed time enough before such motion, to enable the adverse party to take a copy thereof, or he cannot obtain an absolute order; and all affidavits, before they are read in court, or used to ground any orders, writs, process, or other proceedings must be filed at the affidavit office, and attested by a true copy thereof, under the hand of the register, or his deputy; and
till

till then the registers, their clerks, and deputies shall not make, pass, or enter any orders for attachments, commissions, or other proceedings, grounded on the same: but all affidavits belonging to the *Supplicavit* office, and the *Petty Bag* office, and also those touching lunatics and bankrupts, are to be filed in the several offices where such particular matters are transacted. *Chan. Order. 15 Nov. 12 Car. 2.*

In an affidavit to ground any motion or petition for further time, the point must be particularly set forth, to which the person said to be a material witness, and beyond the seas, can materially depose.

In an affidavit of notice, the name of the party's clerk in court to whom the same was delivered, must be mentioned; the words *notice in writing* must be inserted therein; and if the person who served the notice is not certain that the person he served was the parties clerk in court, he must say in such affidavit, *as he is credibly informed and verily believes*; but when notice is left at the seat of the clerk in court, with his clerk or agent there, it is not necessary to name such clerk or agent.

Affidavits on various Occasions.

In Chancery. Between *J. K.* plaintiff,
and
 A. B. defendant.

J. R. clerk to *J. B.* of *Ec.* maketh oath, Affidavit of
that he this deponent, did on the 22d day of service of
May last past, serve the said defendant *A. B.* subpoena
with a subpoena issuing out of, and under the to appear.
seal of this honourable court, by delivering the
body of the said subpoena so under seal as afore-
said, unto *Mary* the wife of the said defendant
A. B. at his house situate in *Queen Street* in the
city of *London*, by which said subpoena the said
defendant *A. B.* was commanded to appear in
this honourable court, the day of *June*
C 4. instant

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instant, at the suit of the abovenamed plaintiff, as appeared unto this deponent by the label of the said *subpœna*.

Sworn, &c.

J. R.

In Chancery.

Between *A. B.* plaintiff,
and

C. D. and *W. K.* defendants.

Affidavit of
service of
subpœna for
an injunction.

C. B. of *New Inn* in the county of *Middlesex*, gentleman, maketh oath, that he this deponent did on the 22d day of *December* last, deliver a label of a *subpœna*, under seal of this honourable court, to Mr. *T. H.*'s clerk, at his house in *Tbreadneedle Street* in the city of *London*, who promised this deponent, that he would deliver the same to his said master, which said Mr. *H.* (as this deponent has been credibly informed and verily believes) is the person made use of by the said defendant *C. D.* in managing his business as his solicitor or attorney at law, and is now actually suing the plaintiff on a note given by him to the said defendant *C. D.* at common law, in the name of the other defendant *W. K.* against which the said plaintiff is now seeking relief in this honourable court: And this deponent further saith, that on the same day, he this deponent left the body of the said *subpœna* under the seal as aforesaid, for the said defendant *C. D.* at his late dwelling house, and last place of settled residence, in *St. Martin's le Grand*, in the said city of *London*, (as this deponent hath been also credibly informed) by delivering the same to a woman, who said she then lived in the said house, and acquainted her with the contents thereof, which said *subpœna* was for the said *C. D.* to appear in this honourable court, at the suit of the said plaintiff, and was returnable immediately.

Sworn, &c.

C. B.

In

In Chancery.

Between *A. B.* plaintiff,
and
M. R. defendant.

J. D. clerk to *J. B.* of the *Lyons Inn* in the *Strand*, in the county of *Middlesex*, gentleman, maketh oath, that he this deponent did about nine of the clock in the forenoon of the 28th day of *November* instant, (*the particular hour of the day when served, to shew it was before the rising of the court*) personally serve the defendant *M. R.* with a *subpœna*, issuing out of, and under the seal of this honourable court, by leaving the body of the said *subpœna* with the said defendant *M. R.* so under seal as aforesaid, by which *subpœna* the said defendant *M. R.* was commanded to appear in this honourable court, the 28th day of *November* instant, at the suit of the above named plaintiff, as appeared unto this deponent by the label of the said *subpœna*.

Affidavit of
service of
subpœna on
the day of
the return.

Sworn, &c.

J. D.

In Chancery.

Between *A. B.* plaintiff,
and

M. R. C. D. and *J. K.* defendants.

J. D. clerk to *J. B.* of, &c. gentleman, maketh oath, that he this deponent did on (*the day when served*) personally serve the defendant *M. R.* with a *subpœna*, issuing out of, and under the seal of this honourable court, by delivering unto the said defendant a label of the said *subpœna*, and this deponent did at the same time shew unto the said defendant the body of the said *subpœna*, so under seal, as aforesaid; and this deponent did also on the same day (*or as the case may be*) deliver another label of the said *subpœna* to the defendant *C. D.* and at the same time shewed him the body of the said *subpœna* so under seal as aforesaid: and this deponent further saith, that he did on the 10th

Affidavit of
service of
subpœna on
several de-
fendants.

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day of *November* instant, serve the other defendant *J. K.* with the said *subpæna*, by leaving the body of the said *subpæna*, so under seal as aforesaid, at the dwelling house of the said defendant *J. K.* with a woman, who informed this deponent she was the servant maid of the said defendant *J. K.* by which said *subpæna*, the said defendants were directed to appear in this honourable court, the day of *(the return of writ)* at the suit of the said *A. B.* as appeared to this deponent by the label of the said *subpæna*.

Sworn, &c..

J. D.

In Chancery.

Between *R. H.* plaintiff,
and
J. G. defendant.

Affidavit

to ground a
subpæna re-
turnable im-
mediately.

D. D. clerk to *R. K.* of *Castle Yard*, *Holborn*, in the county of *Middlesex*, gentleman, maketh oath, that the defendant *J. G.* liveth in *Great George Street*, within the city of *Westminster*, or the suburbs of the city of *London*, in the county of *Middlesex*. And this deponent, this present day, enquired at the said defendant's house or lodgings in the said street, whether he the said defendant was in town or not; and this deponent was there informed by a servant in livery at the said defendant's house or lodgings, that he was then within, in his said house or lodgings.

Sworn, &c..

D. D.

N. B. If the defendant does not live in *London*, or the suburbs thereof, *the place where*, must be stated in the affidavit, and how many miles it is distant from *London*.

In

In Chancery.

Between T. C. plaintiff,
and
A. B. defendant.

C. B. of, &c. gentleman maketh oath, that he this deponent this 17th day of May instant, went to Mr. P. P. who is solicitor for the defendant in this cause, to enquire where he could find the defendant A. B. in order to serve him with a *subpœna* to hear judgment in this cause, which this deponent then had in his pocket ready to serve, and the said Mr. P. P. told this deponent that he believed the said A. B. was in *Scotland*, but immediately afterwards returned for answer that he knew not where he was; and this deponent the same day went to the *Crown and Anchor Tavern*, in the *Strand*, (which place this deponent was informed was a house where the said A. B. used frequently to come) and the master of the said tavern told this deponent that he did know where the said A. B. was, or was to be met with; and this deponent saith, that he on the same day went to a public house, called the *Flying Horse*, in *Bartholomew Lane*, in the city of *London*, another place where this deponent was likewise informed the said defendant A. B. used frequently to come, and the master of the house likewise informed this deponent, that he knew not where the said defendant A. B. was, but believed he was very hard to be met with; and a gentleman being then in the said *Flying Horse*, told this deponent, that he knew the defendant A. B. very well, and that he was not then in *Great Britain*.

Affidavit to obtain an order of court that service of subpœna to hear judgment on defendant's solicitor, shall be deemed good service.

Sworn, &c.

C. B.

In Chancery.

Between J. L. plaintiff,
and

R. T. defendant.

Affidavit
that defend-
ant ab-
sconds, to
avoid being
served with
process.

J. D. clerk to J. B. of, &c. gentleman, so-
licitor for the plaintiff in this cause, maketh
oath, that on the most diligent and strict search
and inquiry at the usual place of residence of the
defendant R. T. and elsewhere, he cannot be
found to be served with a *subpœna*, issuing out
of, and under the seal of this honourable court,
returnable (*the return*) at the suit of the said
plaintiff in this cause: and this deponent fur-
ther saith, that he was informed by Mr. J. K.
of, &c. and this deponent justly suspects that
he the said defendant R. T. is gone into parts
beyond the seas, or now absconds on purpose
to avoid being served with the aforesaid process,
and saith that the said defendant R. T. hath not
entered any appearance in this cause.

Sworn, &c.

J. D.

In Chancery.

Between F. G. plaintiff,
and

L. M. defendant.

Affidavit
that a plain-
tiff cannot
be found.

P. P. of, &c. solicitor for the defendant in
this cause, maketh oath, that he this deponent
hath lately used his utmost endeavours to find
out the said complainant, but after the most
diligent search, this deponent cannot hear
where he is, though this deponent enquired af-
ter him the said complainant at, &c. (*the place
where enquiry made*) where this deponent was
informed he lived and resided: and this de-
ponent further saith, that he hath applied to
Mr. D. the said complainant's clerk in court,
and to Mr. C. B. the said complainant's solici-
tor in this cause, to be informed by them where
the said complainant lived, or might be found,

but

But they both refused to give this deponent any information therein.

Sworn, &c.

P. P.

N. B. On the above affidavit, the defendant may move to *stay his answer* till the plaintiff's clerk in court by note in writing to defendant's clerk in court, shews where plaintiff lives.

In Chancery.

Between R. R. plaintiff,
and
S. T. defendant.

R. R. of, &c. the complainant in this cause, Affidavit of
maketh oath, that on (*the time when subpœna* complainant
served on defendant) he saw P. R. of, &c. serve that he saw
the defendant S. T. with a writ of *subpœna*, issu- another per-
ing out of, and under the seal of this honourable son serve de-
court, whereby the said defendant S. T. was fendant
required to appear in the said court, on (*the re- pœna at his*
turn of the writ of subpœna), at the suit of this suit.
deponent, and that since the service thereof,
the said P. R. is dead, or has absconded, so
that he cannot now be found or met with.

Sworn, &c.

R. R.

In Chancery.

Between R. R. plaintiff,
and
S. T. defendant.

R. R. of, &c. the complainant in this cause Affidavit of
maketh oath, that on (*the time when*) at (*the* complainant
place where) he heard S. T. the defendant in that defend-
this cause, own and confesse to Mr. T. C. (*the* rant confes-
person to whom he made such confession) that he the sed he was
said defendant was served with a writ of *sub- a subpœna at*
pœna, issuing out of, and under the seal of this his suit.
honourable court, returnable (*the return of*
writ) at the suit of this deponent.

Sworn, &c.

R. R.

In

In Chancery.

Between *A. B.* plaintiff,
and*C. D.* defendant.Affidavit of
service of a
subpœna for
costs.

D. D. clerk to Mr. *R. K.* of, &c. solicitor for the plaintiff in this cause, maketh oath, that he this deponent did on (*the time when subpœna served*) personally serve the defendant in this cause with a writ of *subpœna*, issuing out of, and under seal of this honourable court, by delivering the said writ so under seal, to the said defendant, by which writ the said defendant *C. D.* was enjoined to pay the sum of 120 *l.* 5 *s.* 4 *d.* to the plaintiff for costs: and this deponent further saith, that he did then demand the said sum of 120 *l.* 5 *s.* 4 *d.* for the plaintiff's use, but that the said defendant refused to pay the same to this deponent, nor hath the said defendant since paid the same, or any part thereof, either to this deponent or to the said plaintiff, as this deponent is informed, and verily believes.

Sworn, &c.

D. D.

In Chancery.

Between *A. B.* plaintiff,
and*C. D.* defendant.Affidavit of
service of a
subpœna to
testify.

C. B. of, &c. gentleman, the solicitor in this cause, maketh oath, that he this deponent did on (*the time when subpœna served*) personally serve Mr. *W. W.* (*the witness*) with a *subpœna*, issuing out of, and under the seal of this honourable court, by delivering unto the said Mr. *W. W.* the body of the said *subpœna*, so under seal as aforesaid; and this deponent further saith, that he did at the same time give to the said Mr. *W. W.* one shilling, by which said writ of *subpœna*, the said Mr. *W. W.* was enjoined immediately to appear in this honourable court, to testify for the plaintiff in this cause.

cause, as appeared to this deponent by the label of the said *subpœna*.

Sworn, &c.

C. B.

In Chancery.

Between *A. B.* plaintiff,
and
C. D. defendant.

P. P. of, &c. solicitor for the plaintiff in this cause, maketh oath, that he this deponent did on the (*time when served*) deliver to Mr. *E. D.* the defendant's clerk in court, a true copy of a writ of execution of a decree, bearing *teste* at *Westminster*, the (*date of decree*) and at the same time shewed him the said writ of execution, issuing out of, and under seal of this honourable court, whereby the said defendant *C. D.* was enjoined or directed to (*the matter decreed*.)

Affidavit of service of a writ of execution of a decree on defendant's clerk in court.

Sworn, &c.

P. P.

In Chancery.

Between *A. B.* plaintiff,
and
G. D. defendant.

P. P. of, &c. maketh oath, that on (*the time when served*) he this deponent did personally serve the defendant in this cause, with a writ of execution, of a decree made in this cause, bearing *teste* at *Westminster*, the (*date of the decree*) by shewing the said writ, issuing out of, and under the seal of this honourable court, unto the said defendant, at his house in (*the place where*) and at the same time delivering to him a true copy thereof; by which said decree and writ, the said defendant was enjoined and directed to pay (*the matter directed by the decree*) in the said decree and writ mentioned: and this deponent saith, that he at the same time shewed unto the said defendant, a letter of attorney, executed by the said complainant, under his hand and seal, empowering this deponent

Affidavit when the same is served on the parties themselves, &c.

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ment to ask, demand, and receive of the said defendant, the said sum of (*the money decreed*); a copy of which said letter of attorney, he this deponent then also left with the said defendant, of whom he did then demand the said sum of (*the money decreed*) but the said defendant did not then pay the same, or any part thereof, to this deponent, nor hath he yet paid the same to this deponent, or to the said plaintiff, or to any other person for his use, to this deponent's knowledge or belief.

Sworn, &c.

P. P.

In Chancery.

Between A. B. plaintiff,
and

C. D. defendant.

Affidavit of
service of
notice of
motion.

D. D. clerk to R. K. of, &c. solicitor for the plaintiff in this cause, maketh oath, that he this deponent did, on (*the time when served*) serve Mr. F. D. who acts as clerk in court for the defendant in this cause, (as this deponent hath been informed and believes) with a notice in writing in this cause, *purporting* that the plaintiff intended to move this honourable court (*here state the notice*) by delivering a true copy of the said notice to the said Mr. D.'s clerk or agent, at his seat in the six clerks office.

Sworn, &c.

D. D.

N. B. This affidavit will be sufficient to support any notice of motion, varying the notice, *mutatis mutandis*.

In Chancery.

Between A. B. plaintiff,
and

C. D. defendant.

Affidavit of
service of a
petition.

D. D. clerk to B. K. of, &c. solicitor for the defendant in this cause, maketh oath, that he this deponent, did on (*the day of service*) (if on the

the plaintiff himself, say, personally serve the said plaintiff with a true copy, &c.) leave at the seat of Mr. *F. D.* of the six clerks office, with his clerk or agent there, a true copy of a petition in this cause, preferred to the right honourable the master of the rolls, by the said defendant, with his honour's answer or order thereon, bearing date (*the date of order*) whereby it was ordered, that the parties concerned should attend his honour on the matter of the said petition the then next day of petitions, of which notice was forthwith to be given, which said Mr. *D.* acts as clerk in court for the plaintiff in this cause, as this deponent is credibly informed, and verily believes: and this deponent further saith, that at the time he so served the said copy, he shewed the said original petition or order thereon, to the said Mr. *D.*'s clerk or agent.

Sworn, &c.

D. D.

In Chancery.

Between *A. B.* plaintiff,

and

C. D. defendant.

A. B. of, &c. the complainant in this cause, maketh oath, that he this deponent is not worth the sum of 5 *l.* in all the world, his just debts being first paid, and his wearing apparel and the matters in this cause only excepted.

Affidavit of the poverty of a plaintiff to prosecute in *forma pauperis*.

Sworn, &c.

A. B.

N. B. This affidavit will do for a defendant, varying the same accordingly.

In Chancery. Between *R. M. S. M.* and *E. M.* infant children, by *W. M.* their next friend, plaintiffs,

and

R. W. B. W. defendants.

R. H. of, &c. gentleman, maketh oath, and saith, that *R. M. S. M.* and *E. M.* were baptized in the parish of St. Mary, Newington, in the

Affidavit to a certificate of a person's being of age.

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the county of *Surry*, on the (*time when*) as appears to this deponent by the register book of christenings kept for the said parish, which he hath examined, and verily believes to be true: and this deponent further saith, that at the time he searched and examined the register book of the said parish, which was on the (*the time when*) he took a true copy of the entry of the said baptism, which is hereunto annexed, and is (amongst many others) in the words and figures following, (that is to say) 12th July, 1744, &c. (*the words of the respective christenings of the plaintiffs*) the word *christenings* being wrote on the top of each leaf of the said register book.

Sworn, &c.

R. H.

N. B. The extract of the christenings is annexed to this affidavit, engrossed on a treble sixpenny sheet of stamped paper.

In Chancery.

Between A. B. plaintiff,
and

C. D. defendant.

Another
form of af-
fidavit to a
certificate of
a person's
being of age.

J. D. of, &c. gentleman, maketh oath, that the above mentioned extract, signed by the Reverend Mr. J. K. rector of the parish of *St. Mary, Newington*, in the county of *Surry*, is a true copy or extract of the register of the said parish, so far as concerns the baptism of the said A. B. and this deponent further saith, that he did (*the time when*) examine the said copy or extract with the said parish register, and that the name J. K. set and subscribed thereto, is of the proper hand writing of the said J. K. who set and subscribed his name thereto, in this deponent's presence.

Sworn, &c.

J. D.

N. B.

N. B. The parish clerk must write the certificate of plaintiff's baptism, on a treble fixpenny sheet of stamped paper, and thereunder you must engross the above affidavit, which will save your client 2 s. 6 d. as then the said certificate will not be an exhibit.

In Chancery. Between *A. B.* plaintiff,
and
C. D. and *J. K.* defendants.

A. B. of, &c. Esq; the complainant in this cause, maketh oath, that this bill is not exhibited by the consent, knowledge, or combination of either of the said defendants *C. D.* or *J. K.* mentioned in the said bill, but merely of his own free will, for relief in this honourable court.

Complainant's affidavit on bringing a bill of interpleader.

Sworn, &c.

A. B.

In Chancery. Between *A. B.* plaintiff,
and
C. D. defendant.

A. B. of, &c. Esq; the complainant in this cause, maketh oath, that he this deponent has not, nor to the best of his knowledge, remembrance, or belief, ever had all or any of the deeds, evidences, and writings relating to the estate in question in this cause, and which are mentioned and set forth in this deponent's bill, exhibited in this honourable court, against the said defendant, nor doth this deponent know where the said deeds, evidences, and writings, or any or either of them, now are, unless they be in the custody, possession, or power of the said defendant.

Affidavit that complainant has not the deeds inquired after, by bill to annex thereto before filed.

Sworn, &c.

A. B.

In

In Chancery.

Between *A. B.* plaintiff,
and*C. D. J. R.* and *F. T.* defendants.

Affidavit

that plaintiff
had writings
proper to be
annexed to
the bill, but
has lost the
same.

A. B. of, &c. Esq; the complainant is this cause, maketh oath, that some time ago, *to wit*, *(the time when the writings are supposed to be lost)* the writings now sued for in this cause, were in the custody or power of him this deponent, but since the said time, he this deponent hath accidentally lost the same: and this deponent further saith, that he doth not know where the said writings are, unless they are in the hands, custody, or power of the said defendants, some or one of them, or else that the said writings are now, or late were in the custody of the said defendant *F. T.* as he is credibly informed and verily believes.

Sworn, &c.

A. B.

In Chancery.

Between *A. B.* plaintiff,
and*C. D.* defendant.Affidavit of
defendant's
having com-
mitted
waste.

A. B. of, &c. the complainant in this cause, maketh oath, that *C. D.* the defendant in this cause, on *(the time when the waste was committed)* did pull down and destroy part of the barns and out-houses at *(the place where)* to which he this deponent hath lawful title, being seised in fee of the said estate and premises, as this deponent is advised and believes, and for which he is now prosecuting the defendant in this honourable court; and that the said *C. D.* did fell and cut down 70 timber trees, on the lands belonging to the same, and continues to commit other waste and spoil in and upon the said estate of this deponent, to his great loss and damage.

Sworn, &c.

A. B.

In

In Chancery. Between *A. B.* and *J. K.* plaintiffs,
and

C. D. and *L. R.* defendants.

D. D. clerk to Mr. *R. K.* solicitor for the defendant *C. D.* in this cause, maketh oath, that he this deponent did (*the time when*) personally serve Mr. *F. D.* with an order of this honourable court, made in this cause (*time when same was made,*) whereby it is ordered, that a report made in this cause by Mr. *Leeds*, one of the masters of this hon. court, bearing date 1st day of *May* last whereby Mr. *J. J.* on the behalf of the said *C. D.* is reported the best purchaser of the premises therein mentioned, at the sum of 2000 *l.* and all the matters and things therein contained, do stand ratified confirmed by the order, authority, and decree of this court, to be observed and performed by all parties thereto, according to the tenor and true meaning thereof, unless the parties concerned who are many in number, and live remote from each other, their respective clerks in court having notice thereof, should within eight days after such notice, shew unto this court good cause to the contrary, by delivering to the said Mr. *F. D.* a true copy of the said order, and at the same time shewing him the said order passed and entered: and this deponent further saith, that he did afterwards on the same day, personally serve Mr. *G.* with the said order, by delivering to the said Mr. *G.* a true copy of the said order, and at the same time shewing him the said order: and this deponent further saith, that he did afterwards on the same day, personally serve Mr. *H.* with the said order, by delivering to the said Mr. *H.* a true copy of the said order, and at the same time shewing him the said order, which said Mr. *D.* Mr. *G.* and Mr. *H.* are all the clerks in court for the plaintiffs and defendants

Affidavit of the service of an order nisi in order to make the same absolute.

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defendants in this cause, as this deponent is informed and believes: and this deponent further saith, that he did on the same day personally serve Mr. N. who by a former report had been reported the best purchaser of the said premises, with the said order, by delivering to the said Mr. N. a true copy thereof, and at the same time shewing him the said original order passed and entered.

Sworn, &c.

D. D.

In Chancery.

Between L. G. plaintiff,
and

H. J. S. R. and T. W. defendants.

Affidavit
where de-
fendants
live in dif-
ferent coun-
ties, to ob-
tain an order
at L. in the
county of C.
as this deponent
is informed,
and verily be-
lieves.
Sworn, &c.
C. S.

C. S. of, &c. maketh oath, that the said several defendants live or reside at a great distance from each other, in different counties of England, to wit, H. J. at C. in the county of W. S. R. at C. in the county of S. and T. W. at L. in the county of C. as this deponent is informed, and verily believes.

Sworn, &c.

C. S.

to confirma-
master's re-
port nisi may be good service on the clerk in court.

In Chancery.

Between T. F. plaintiff,
and

A. H. defendant.

Affidavit of
service of an
order to dis-
solve an in-
junction
nisi.

J. R. clerk to Mr. J. A solicitor for the defendant in this cause, maketh oath, that he this deponent did on the 5th day of May inst. personally serve Mr. B. clerk in court for the plaintiff in this cause, with an order of this honourable court, made in this cause, bearing date the 2d day of May instant, whereby it was ordered; that the said injunction obtained by the plaintiff in this cause for the stay of the defendant's proceedings at law be dissolved, unless the plaintiff or his clerk in court having notice thereof, shall on Thursday the eighth day of May instant,

High Court of Chancery.

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Instant, shew unto this honourable court, good cause to the contrary, by delivering unto the said Mr. B. at his seat in the six clerks office, a true copy of the said order, and at the same time shewing unto him the said original order.

Sworn, &c.

J. R.

In Chancery.

Between A. B. plaintiff,
and
C. D. defendant.

C. B. of, &c. gentleman, maketh oath, that he this deponent did on the *(time when served)* leave at the seat of Mr. W. of the six clerks office with his agent there, a true copy of an order in writing in this cause, duly passed and entered, bearing date *(the date of the order)* whereby it was ordered, that, &c. *(the ordering part of the order concisely set forth)* and this deponent further saith, that he did on the same day also leave at Mr. D.'s seat with his clerk or agent there, another copy of the said order in writing, purporting as aforesaid, which said Mr. W. is clerk in court for the said A. B. and the said Mr. D. for the said C. D. as this deponent is credibly informed and verily believes; and this deponent at the same time shewed each of the said respective agents he so served as aforesaid, the said original order.

Affidavit of service of an order on two clerks in court.

Sworn, &c.

A. B.

In Chancery.

Between A. B. plaintiff,
and
C. D. defendant.

C. D. of, &c. gentleman, the defendant in this cause, maketh oath, that since the time of pronouncing the decree in this cause, he this deponent hath discovered new matter of consequence in the said cause, particularly that the plaintiff, &c. *(here state the new matter to the court)* which

Affidavit of having discovered new matters for a bill of review.

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which this deponent could not possibly know, so as to make use thereof in his defence, at the time of pronouncing the said decree.

Sworn, &c.

C. D.

In Chancery.

Between A. B. plaintiff,
and

C. B. defendant.

Affidavit
that defend-
ant cannot
answer with-
out sight of
the goods.

C. D. of, &c. gentleman, the defendant in this cause, maketh oath, that he this deponent cannot put in a full and perfect answer to the complainant's bill, without sight of several goods and things mentioned in the said plaintiff's bill: and this deponent further saith, that the said goods and things are now at (*the place where they lye in the country*) above (*the distance in measured miles*) distant from the place of this deponent's now residence.

Sworn, &c.

C. D.

N. B. If the bill is for a discovery of deeds, &c. the above affidavit must be altered *mutatis mutandis*.

In Chancery.

Between A. B. plaintiff,
and

C. D. defendant.

Affidavit
that defend-
ant is sick
and unable
to answer.

J. K. of, &c. doctor of physic, maketh oath, that he this deponent has attended C. D. the defendant in this cause, for three weeks last past, as his physician, and saith, that during all the time aforesaid, the said C. D. has been, and now is so ill and disordered in his senses, by means of a violent fever, which he now labours under, that he is confined to his bed, (*or as his disorder may be,*) and this deponent verily believes that the said C. D. is by means of such indisposition at this time utterly incapable of answering the plaintiff's bill.

Sworn, &c.

J. K.

In

High Court of Chancery.

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In Chancery.

Between *A. B.* plaintiff,
and

C. D. defendant.

A. B. of, &c. gentleman, the plaintiff in this cause, maketh oath, that *T. C.* of, &c. gentleman, is a very material witness on his behalf in this cause, and without whose evidence this deponent (as he is advised and verily believes) cannot safely proceed to a hearing in his said cause, and is now in the 80th year of his age, as he the said *T. C.* informed this deponent: and this deponent further saith, that the said *T. C.* appears to be very weak and infirm, and in a declining way, and in all probability not likely to live long.

Affidavit that a witness is old and infirm on a petition to examine him *de bene esse* before issue joined.

Sworn, &c.

A. B.

If any of the complainant's witnesses are going abroad, or are sick, whereby he is in danger of losing their testimony, the court on affidavit thereof, will order them to be examined *de bene esse* before answer: for this purpose the above affidavit *mutatis mutandis* will do.

In Chancery.

Between *A. B.* plaintiff,
and

C. D. defendant.

C. D. of, &c. Esq; the defendant in this cause, *R. K.* of, &c. gentleman, solicitor for the said defendant, and *F. D.* the defendant's clerk in court in this cause, severally make oath and say; and first the said defendant *C. D.* on his oath saith, that the depositions taken in this cause, by virtue of a commission issued for that purpose, out of, and under seal of this honourable court, have not been seen read, or heard read by this deponent, nor hath this deponent been informed or acquainted with the purport or contents of the said depositions so taken, nor will this deponent, until publication, shall be further enlarged and pass, by the or-

Affidavit of defendant, his clerk in court, and solicitor, in order to enlarge publication, the commission being returned.

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der of this honourable court, in case such order can be obtained : and the said defendant further saith, that he hath several material witnesses to examine, as he is informed and believes, to wit, (*here name the witnesses,*) and the said *R. K.* and *F. D.* for themselves, severally make oath and say, that the said depositions are returned, and now remain in the custody of this deponent, *F. D.* the said defendant's clerk in court, unopened and unpublished, as these deponents severally believe : and these deponents further say, that they, nor either of them, have not seen read, or heard read, the said depositions, nor been informed of the contents thereof, nor will they these deponents or either of them, receive such information, until publication shall be further enlarged, and pass by the further order of this honourable court, in case such order can be obtained.

Sworn, &c.

C. D.

R. K.

F. D.

N. B. Where the parties live distant from *London*, the above affidavit is sometimes made by the parties separately, but then all the parties must make such affidavit before any order can be obtained to enlarge publication.

In Chancery.

Between *A. B.* plaintiff,
and

C. D. defendant.

Affidavit of
mortgagee
attending to
receive his
mortgage
money, pur-
suant to the
master's re-
port.

A. B. of, &c. the plaintiff in this cause, maketh oath, that he this deponent in pursuance of the report of *Leeds, Esq;* one of the masters of this honourable court, bearing date (*the date of report*) did (*the day appointed by the report to pay the mortgage money*) personally attend and wait at (*the place where appointed to be paid*) from before the hour of ten of the clock, until and after the hour of twelve

twelve of the clock (*the hours mentioned in the report*) in the forenoon of the said (*the day the money was to be paid*) in order to receive from the defendant in this cause, the sum of 2080 l. 9 s. 6 d. by the said report, reported due, and directed to be paid to this deponent for principal, interest, and costs for the mortgage in question in this cause, when and where the said defendant (*or as the case may be*) or any other person on his account, did not to this deponent's knowledge or belief, attend or pay to this deponent the said sum of 2080 l. 9 s. 6 d. or any part thereof: and this deponent further saith, that the said sum still remains due and unsatisfied.

Sworn, &c.

A. B.

In Chancery.

On behalf of G. R.

Affidavit of the identity of an arbitrator's hand writing.

B. R. of, &c. gentleman, maketh oath, that he this deponent did see G. R. of, &c. Esq; now residing, &c. duly sign and seal the instrument or award in writing, marked with the letter A. and produced to this deponent at the time of his swearing this his affidavit, which instrument bears date, (*date of award*), and this deponent further saith, that the name B. R. which is set and subscribed as one of the witnesses to the execution thereof, is of the proper hand writing of this deponent, and that the name H. D. the other subscribing witness to the due execution thereof, is of the proper hand writing of the said H. D. and the said instrument or award was on the day of the date there of, duly signed and sealed by the aforesaid G. R. in the presence of the said subscribing witnesses thereto.

Sworn, &c.

B. R.

N. B. Affidavits for the different applications to the court for redress, relief, or to or in an-

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swer to matters stated to the court by affidavit, must be drawn according to the nature of the case for which they may be wanted, which the young practitioner or clerk may easily do, by attending properly to the above precedents.

All affidavits in this court must be ingrossed in a fair hand, on treble 6d. stamp paper, and sworn before a Master in Chancery, at his house, chambers, or at the public office if in town, if in the country, before a Master extraordinary. They must be signed by the party swearing same on the left hand side, and the jurat on the right. Pay swearing affidavit if in a cause 1 s. if no suit subsisting 1 s. 6 d. They must be filed with the clerk of the affidavits, at the affidavit office in *Symmond's Inn*, and an office copy-made to be read in court, for which you must pay 4 d. per sheet exclusive of the duty, register's hand thereto 1 s. and for registering same 4 d. per sheet, for every certificate signed by the register 1 s. (or for expedition you may copy same yourself, which he will mark, and file the original.) All affidavits to ground motion must be filed early enough for the adverse party to take a copy thereof. Pay filing affidavit 4 d. Pay searching for affidavit if no office copy bespoke 6 d. for each term. See *Chan. Orders* 28 Feb. 8. Car. 23 January, 5 Car. 15 November, 12 Car. 2. 24 June, 13 Car. 26 October, 1 Jac. 2.

Cases of
practice.

Pauper's affidavits after admittance are not on stamp.

On contradictory affidavits of the same person, the court requires personal examination. *Vesey, Vol. 2. Case 14.*

An affidavit may be filed on the very day an attachment is made out, but not after. *Mj. Case.*

It is the established practice of the court not to enlarge the order, where it has directed that affidavits shall be filed on both sides within a certain time. *Barn. Rep. 402.*

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P E R S O N S under the immediate favour and protection of this court.

Infants may sue in this court, if plaintiffs, by their *prochein amy* or next friend, and defend suits by a *guardian* assigned them by the court, whose answer is then taken on the oath of the guardian, and not of the infant. Infants.

When an infant exhibits his bill against another, it is done by some proper person, who is called his *prochein amy* or next friend, and such person is liable to pay the costs of the suit, if the matter contended for is decreed against the infant.

When an infant is served with a *subpœna* to answer, and he doth not appear to the bill filed against him, plaintiff must procure an affidavit to be made of the service of the writ, on which an attachment issues against the infant, on the ground whereof plaintiff gets a council to move the court, that an order may be made for a messenger to bring the infant into court; when brought into court if no one offers to become his guardian, the court generally assigns him the senior fix clerk as his guardian to appear to the bill, and answer, and defend the suit.

If an infant appears to a bill, and refuses to answer, an attachment issues against him, tho' he cannot be arrested thereon. He is brought into court in the same manner as before.

Though the court through necessity, that justice may be done, appoint an infant a guardian to appear, and defend a suit, yet the most common way is for some relation or friend of the infant's to pray the court to be appointed guardian, which is ordered accordingly, the guardian so appointed must swear to the answer, and if it should be decreed by the court that the guardian should perform a decree on be-

half of an infant, his non-performance will make him liable to be committed.

An infant may by his *prochein amy* call his guardian to an account during his minority, and if a stranger enters and receives the rent and profits of an infant's estate, this court will consider such stranger as trustee for the infant, and make him account accordingly.

An infant in general cannot be foreclosed without a day given him to shew cause, (usually six months) after he comes to age, but on a bill brought to foreclose an infant's estate, the court generally decrees the lands to be sold to pay the debts, which act of the court will bind the infant, though no day given him.

A decree against an infant *nisi*, &c. is deemed an absolute decree, which when he comes to age, he cannot set aside by *original bill*, unless he can prove fraud or collusion between the plaintiff to the suit, and his guardian, yet notwithstanding, when he comes of age, he may amend his answer sworn by his guardian, and file a bill for discovery of the fraud.

If an infant when he comes of age puts in a new answer, he may offer this to the court as a good cause why the decree should not be made absolute against him.

An infant's answer sworn by guardian, and a decree thereon, without a day given him to shew cause, such answer shall not be read or offered in evidence against him when of age.

Infants when they come of age, may put in new answers, and make new defences to those made by their guardians on their behalf while in their minority.

The reason an infant's answer is not to be read against him when he comes of age is, in reality, it is not the answer of the infant, but of his guardian; the infant may know nothing of the contents of such answer, or he might
(be

be (when such answer was put in by his guardian) of such tender years, as to be incapable of judging for himself.

An infant's answer by his guardian is not admitted as evidence against him, he not being sworn thereto, and such step is only taken for making proper parties to the suit.

The court will not permit an infant to be prejudiced in his suit or estate by the neglect of his trustees.

The court at the instance of an infant's relations will allot him a maintenance out of a trust estate, though no direction for the same in the deed of trust.

An infant's answer may be referred for scandal, but being the act of the guardian, and not the infant, though such guardian is liable to costs, yet the council who signed the answer shall pay the costs.

A sequestration may issue against an infant.

Infants are bound by conditions in fact, and such conditions as they can perform in equity as well as in law.

They are bound by all conditions, charges, and penalties in an original conveyance, whether they come to the estate by grant or descent.

A deed of gift to an infant on condition, binds him as well as any other person.

By *Stat. 8 Ann* infant trustees may be compelled to convey, but where they take an interest in lands, or where they are given them, charged with the payment of the money, this court will not order them to join in the sale till they come of age.

If an infant sells lands for a valuable consideration, with which he purchases other lands, such sale cannot be helped in this court.

An infant making an agreement, and receives interest under it after he comes of age,

such agreement, if brought in suit, shall be decreed against him.

All bargains by an infant with another shall bind him, where there is mutual benefit.

On a decree *nisi causa*, against an infant, on his coming of age, and before the same is made absolute, he may put in a new answer.

An infant executor, if he is 17, by assenting to the payment of a legacy, such assent shall be good and bind him thereto, provided there are sufficient assets besides to pay debts.

An infant may administer at 17, but cannot commit a *devastavit* till of full age.

Where an infant is appointed an executor, administration must be granted with the *will annexed* to his guardian or next friend, during his *minority*, which power ceases as soon as the infant is 17 years old; the same as to an infant executrix, only the power of the guardian ceases there immediately on her taking a husband of full age.

By *Stat. 22, 23 Car. 2.* all administrators must enter into a bond faithfully to execute their trust, so that when an infant is appointed an administrator, such administration must be granted to another till he is of age, as he cannot legally execute any bond during his minority.

A woman in her minority may make a will and dispose of her personal estate at 12 years of age, so may a male infant at 14, so they can be proved to be of discretion.

Infants may be trustees.

By *Stat. 7 Ann.* infants seized or possessed of estates in fee, in trust, or in mortgage may convey such estates.

Infants cannot be charged on a contract, nor as bailiffs, nor for goods to carry on a trade; and if made factors, &c. security should be taken from them for their accounting.

By

By stat. 29 Geo. 2. infants may surrender leases, in order to renew them, under the direction of a court of equity.

All persons, till twenty-one years, are deemed infants; and while in their *minority* are under the peculiar care and protection of this court.

Ideots, after they are found so, are to sue and answer by the King's attorney, &c. *Lunatics* Ideots and lunatics. generally sue and answer by their committees, if not named a party in the bill or information by the attorney; it is generally considered as a good cause of demurrer, if a bill in nature of an injunction is filed against a lunatic for relief, as to some act done by him during his lunacy; he must not be named a party to such bill, for that were to stultify himself.

In matters of a trifling nature, the court will permit a lunatic to answer by his guardian; but in considerable concerns, the parties must take out a commission of lunacy against him.

The King or his committee has an *ideot's* lands in their own right by *stat. prærog.* but in a *lunatic* they are only trustees for his benefit; a lunatic must be named a party to a suit brought against him, but an *ideot* need not, for he can have no right in himself.

The custody of lunatics is not a matter of right, but of prudence; it can never be committed to any that will make gain of it, or who is concerned to outlive the lunatic, or his next heir, as being nearest of blood, and entitled to the administration.

The allowance for the maintenance of a lunatic should be liberal, and according to his degree and fortune.

The committee of a lunatic holds his estate but during the pleasure of the court, and so cannot grant leases, nor in any other manner incumber the lunatic's estate, without a special

The Modern Practice of the

order of court for that purpose. The committee cannot invest the profits of a lunatic's estate in the purchase of lands, &c.

By stat. 15 Geo. 2. a lunatic cannot marry pending the commission against him.

By stat. 4 Geo. 2. persons being ideots, lunatics, or *non compos mentis*, seised or possessed of estates in fee, or for life, or years, in trust or by way of mortgage, are enabled to make conveyances or assignments of such estates, in such manner as the chancellor shall direct, on hearing all parties from whom such ideot or lunatic shall be seised in trust.

No certificate, order, or affidavit, touching any lunatic, shall be made use of in this court, unless filed with the clerk of the custodies.

By stat. 29 Geo. 2. lunatics may surrender leases, in order to renew them under the direction of this court.

Guardian
and pro-
chein amy.

Guardians, and prochein amys. A guardian in this court is he that hath the custody and education of a person who is not of sufficient direction to guide himself and his estate, as *minors, ideots, and lunatics*.

The *prochein amy* is the person by whom an infant, a lunatic, or a feme covert sues in this court. If a *prochein amy* is not sufficient to answer costs, the court will order another person to be named, who is able and sufficient.

Outlawry or excommunication in a guardian or *prochein amy* cannot be pleaded in disability where an infant sues or defends by him, because he acts *in autre droit*.

Guardians are appointed by writ for infants defendants, and one or more guardians jointly are sometimes appointed; sometimes when no other person appears in behalf of the infant, this court assigns one of the six clerks to be guardian to an infant; such guardian cannot be otherwise appointed than by bringing the infant

fant into court, or such infant praying a commission to have a guardian assigned him.

A guardianship of an infant is not assignable.

By stat. 12 *Car.* 2. if a person appointed a guardian under this act dies, or refuses to take on himself the guardianship, the court is empowered to appoint another in his room.

A guardian by the *common law* may be removed; but a guardian, according to the *statute*, cannot.

A guardian's duty is to take care of the infant's person, education, and estate. As he can do nothing but for the benefit of the infant, he must not intermeddle with any thing but of which he must render an account. He must not break into the principal of the infant's fortune, but for matters of necessity, as illness of the infant, binding apprentice, &c. which is generally done under sanction of the court by order.

He may discharge incumbrances by bonds or otherwise, affecting the infant's estate; and shall, in passing his accounts, be allowed all reasonable expences.

Trustees are persons who take on them a trust Trustees. for the benefit and emolument of another.

By stat. 7 *Ann* infant trustees may be compelled by the court to convey an estate as they shall direct, without a day being given them so to do; according to the established practice of the court, no act of the trustee shall prejudice the *cestuyque trust*, but the trustee shall make good the trust.

A trustee may, in some cases, sue in his own name, but generally the *cestuyque trust* must be made a party thereto.

A trustee is entitled to nothing for his time and labour in executing his trust; but if the nature of the trust requires him to appoint a de-

puty, what he pays such deputy shall be reimbursed him.

If there are several trustees, they have all equal authority in the trust. They must join in all receipts for money, or in any conveyances made touching the trust estate, so that they are not chargeable for the receipts of each other, but in particular cases, where their respective acts cannot be distinguished and separated.

Trustees are not to be examined as witnesses against each other, except only in very particular cases, and on an order of court obtained for that purpose.

Feme coverts,

Feme coverts, women married. In matters belonging to the wife, the husband must join in the suit. If the suit is brought by the wife against the husband for performance of the marriage settlement, *alimony*, &c. it must be by *prochein amy*, or next friend.

A feme covert, who has a separate maintenance, may sue in her own name, without her husband joining in such suit, so she may where her husband is banished by statute, and in that case she is considered in law as a *feme sole*.

In a bill against a husband and wife; if the wife answers, and the husband stands out all process of contempt, the bill will be taken *pro confesso*, as against the husband only; the same doctrine holds where a wife by combination refuses to join with her husband in a plea. In matters where the husband is not amenable, the wife must answer alone.

If a wife is defendant to a suit, to be regular, you must serve both husband and wife with process, though the matter only relates to the wife; in particular cases, where the husband is abroad, &c. court will, on application, direct the wife to answer alone; if she puts in her answer alone, without leave of the court, such answer may be suppressed.

No decree can be obtained against a *feme covert* for a matter touching her own estate, if the husband does not appear; for her answer is no answer without his.

A *feme covert*, though an infant, being heir of a mortgagee or trustee, may be ordered to levy a fine, and make such conveyances or mortgages, as trustees of full age.

No one can bring a bill in this court in the name of a *feme covert* without her consent; and if the same is brought, she on her affidavit of the matter may get such bill dismissed.

Heirs are those who succeed by descent and right of blood to lands, &c. being an estate of inheritance. Heirs.

They cannot be disinherited by doubtful or ambiguous words, nor by implication; and where they are disinherited, this court will grant them relief.

Where heirs at law are made defendants in matters of title, they are to have costs, though there is a decree against them; if plaintiffs, and they miscarry in their suit, they have no costs. If the suit appears groundless to the court, they are decreed to pay costs.

Executors and administrators. Executors are persons intrusted by the law with the testator's personal estate, and cannot be removed therefrom by this court, unless there appears to be some *insolvency*, or some *gross* design to waste the testator's effects, or to go into another kingdom. Executors and administrators.

An executor is but a trustee to execute the testator's will; on this principle it is, that a legatee may bring a bill in this court against an executor for his legacy.

An administrator is a person that has the effects of another dying intestate committed to his care by the ecclesiastical court.

Admini-

The Modern Practice of the

Administrators differ only from executors in their institution, and not in their duty and execution of office.

They may bring a bill as administrator, before they have actually taken out letters of administration.

Administrators are entitled to costs on a bill filed against them, to the time of the decree.

Paupers.

Paupers are persons so poor that they are incapable of seeking or defending their right in this court, and therefore apply thereto for aid and assistance, which is always given when they appear to be proper objects. If they are found to abuse that lenity, the court have power to dismiss their suit and punish the delinquent.

They are admitted to prosecute or defend a suit in this court, by petition, grounded on affidavit of their poverty (see p. 41.) after admitted as *paupers*, their council and attorney assigned them by the court take no fees for any business done for them, but as *paupers*, nor can their council or attorney accept or take from them any agreement for future reward, without incurring the censure and punishment of the court, and if the *pauper* offends herein, he is liable to be for ever *dispaupered*.

A *pauper* is liable to pay for the labour of writing his proceedings in a suit, after the rate of two pence per sheet.

If a pauper pending his suit accomodates the same without leave of the court, the same is to be immediately dismissed the court, and never again retained.

In carrying a *pauper's* suit through the different offices, the solicitor must produce the order of admission of his client, as a voucher to the officer for doing the business.

A person may be admitted in *forma pauperis*, at any time during the suit, or the bill may be dis-

dismissed at any time pending the same, on sufficient cause shewn.

The plaintiff and defendant may be admitted paupers in the same suit, but the court must be satisfied that there is a sufficient cause for such admission.

If a decree in this court be given against a *pauper*, he is not liable to pay costs, but is to be punished *personally* according the discretion of the court. If a decree in his favour, the master is to allow him no more costs than were actually paid.

BILLS IN EQUITY.

A bill in equity is in the nature of a declaration at common law; it must state the circumstances of the plaintiff's case, that he is injured by some *fraud, force* or other *injustice* done him; it must pray relief, alledging that he is without remedy at common law, and also process of *subpœna* against the parties it is brought, to compel them to answer the same.

It must have all necessary parties thereto, both plaintiffs and defendants, be signed by a council, and should be true in substance, and the matters and things therein charged should be plainly and sufficiently stated; it must not be filled with a repetition of deeds, &c. *in hæc verba*, but only the effect and substance of so much of such deeds as is pertinent and essential to be set forth to the court; if the bill is *impertinent, criminal, or scandalous*, the defendant may refuse to answer the same till such matters are expunged.

The bills used in this court are the *original bill, injunction bill, amended bill, supplemental bill, cross bill, bill of interpleader, certiorari bill, bill to perpetuate the testimony of witnesses, bill of revivor, bill of review, and original bills after decrees made.* Different kinds thereof.

An

Original
bill.

An *original bill* is the first bill brought in this court for redress or relief, according to the nature of the plaintiff's case, and the rules and order of the court.

Injunction
bill.

An *injunction bill* is a bill brought by a person to stay waste, to stay proceedings at common law, &c. which is prayed by the bill, and granted or refused by the court according to the circumstances of the case, as made out by the party praying the same.

Amended
bill.

An *amended bill* is in fact but a continuance of the original bill; it is an alteration made in the same, by inserting some new or omitted matter, which ought to have been put into the original bill, and must be done before the cause is at issue; if it is necessary to have an answer from the defendant, it is on payment of 20 s. costs.

If the plaintiff finds it necessary to shew any new matter to the court after replication, or the cause is at issue, it must be set forth by way of supplemental bill, which you may draw and file of course without order.

Supplemental
bill.

Supplemental bills are brought on plaintiff's discovering, any new matter since the original bill and answer, in order to supply the defects of some former proceedings.

They may be brought in aid of a decree or account, or to repair a defect of some former proceedings; but in that case, it must be on new matter discovered since the hearing the cause or pending the suit.

If no proof is given of the new matter in the supplemental bill, or if such matter is not fully admitted in the defendant's answer, such bill must be dismissed.

Cross bill.

Cross bills are brought by a defendant against a plaintiff in a former bill depending, touching some matter of such bill, or the facts stated in the defendant's answer to the original bill.

It

It is in nature of a defence to the charge brought against him, and allowed by the court, that he might state his own case with more advantage, than he would be able to do by his answer.

This bill must be brought before publication is passed on the original bill, except the plaintiff in the cross bill will consent to go to a hearing on the depositions already published; when such bill is filed, both causes commonly proceed to be heard together, which cannot be done according to the rules of the court, if one bill be filed after publication in the other cause, unless such last cause is heard on bill and answer. If there be cross causes, and publication passed in both, and one of the plaintiffs omits to serve *subpœnas* to hear judgment, his cause cannot come on at the same time with the other, except the other side consents,

In cross bills the defendant in the first bill must generally answer before he in the last can be compelled to put in his answer, and by the practice of the court, the plaintiff in the last bill cannot have process of contempt against the other till eight days after his own answer is put in, and if he should attempt to make out process of contempt, the defendant may procure an order for a week or a fortnight's time, to put in his answer to the cross bill, after the defendant has put in his answer to the plaintiff's original bill.

Bill of discovery may be brought for the discovery of an estate by one who had a title thereto, as by the patentee of the goods of a felon, or of one outlawed, as outlawry is in nature of a gift or judgment to the King, or for the discovery of any other matter or thing, of which this court has cognizance. Bill of discovery.

Bills of interpleader are brought, where several persons claim the same thing by different or Bill of interpleader.
separate

separate interests, for the opinion or judgment of the court to whom such thing belongs.

This bill may be brought where there are suits brought against a man at law to stay the same till his right of redress is determined in equity, or where he is in danger of being molested at law, it must be grounded on an affidavit that he does not exhibit such bill by way of fraud or collusion, with all or either of the defendants, or of any other person or persons, but only to protect and indemnify himself against the matter or thing he prays relief in by the said bill, (see page 43.)

Certiorari
bill.

A *certiorari bill*, is a bill whereby the plaintiff prays a special writ of *certiorari* for removing a cause from an inferior court of equity, on an allegation that such cause is out of the jurisdiction of such court, that the witnesses or the defendants live out of its jurisdiction, or on some good reasons given why equal justice may not be had in such court. It is in the nature of an injunction bill against the jurisdiction of inferior courts.

On a *certiorari bill*, the cause is brought on to a hearing; the court if they think fit, may either send the cause back from whence it came, or detain it. It is sometimes sent back after publication passed, and sometimes after a *sub-pœna* served to hear judgment.

On motion and a certificate from the fix clerk that the bill is filed, the writ of *certiorari* prayed, issues, directed to the judge of the inferior court, requiring him to certify or send to this court the tenor of the bill or plaint there, with the proofs, and proceedings thereon. On or before the receipt of the writ, the plaintiff must enter into a bond, with condition, that the bill exhibited contains matter sufficient to bear a *certiorari*, and the plaintiff must prove the suggestions of bill in 14 days after the
return

return of the writ, which done, sue out a *sub-pæna*, and when served, get the register's certificate that security is given, and a certificate from the fix clerk that the bill is filed; make brief of bill and get council to move for a *certiorari*, draw up order, pass and enter same as in a common order on motion or petition; this done, sue out your *certiorari*, and get it returned: after the removed bill is ingrossed and filed, move the court for leave to file the writ of *certiorari*, which is to be filed with the removed bill. When this is done, you must draw your interrogatories to prove the matters suggested in your bill; they are to be filed with the examiner, who examines your witnesses to the bill. When your witnesses are examined, you must by motion or petition procure an order to refer the matter to a master, which being drawn up, passed and entered, the examiner attends the master with the depositions taken. If it appears by the plaintiff's own shewing in the bill below, that he lives out of the jurisdiction of the inferior court, you may without further proof by motion or petition, procure an order to retain the bill so removed. When the order is passed and entered, the defendant must put in his answer, when you proceed on the bill as in a common case. If it is found necessary to proceed on the interrogatories, you must get the master's report properly authenticated. If he reports the suggestions in the bill proved, you may by motion or petition, procure an order to retain the bill on the master's report; if you want time to prove the suggestions of the bill, it may be procured by motion or petition, grounded on an affidavit, that the witnesses live at a great distance and remote from each other, or on some other good cause. If you do not make your proofs in due time, the matter may

may be returned by *procedendo* to the inferior court from whence it came.

The defendant only in an inferior court of equity can remove proceedings hither by *certiorari*; where he becomes plaintiff, he must examine his witnesses to the suggestions of bill, within fourteen days after the writ is returned; the defendant in this court does not examine witnesses, or publish any thing in denial thereof, 'till after plaintiff has examined his witnesses to prove the suggestions in bill, and the court retains the cause, then both plaintiff and defendant are to examine their witnesses touching the merits, and publication is to pass according to the ordinary rules of the court.

Bill to perpetuate the testimony of witnesses.

Bill to perpetuate the testimony of witnesses. In this bill must be shewn to the court a title to the thing whereto the testimony intended to be perpetuated relates; it must be grounded on an affidavit that the witnesses are old, infirm, sick, and not likely to live long, or that they are going to sea, or beyond the seas, whereby the party is danger of losing their testimony, &c. on which the plaintiff may obtain an order to examine such witnesses, and if needful, a commission and a *subpœna* to be served on all the parties interested to shew cause. See page 49.

If the witnesses live within ten miles of *London*, the court will order them to be examined in court *de bene esse*.

Bill of revivor.

Bills of revivor are brought to revive suits abated by the death of any of the parties thereto.

If a feme (*plaintiff*) marries, the suit abates; if a feme sole (*defendant*) marries pending the suit, such marriage does not abate the suit; the doctrine of abatement of suits is, that they abate only by the death of such as were so far materially interested therein, as to make it necessary to have their representatives before the court,

court, previous to the final determination of the suit.

No answer in general is necessary to this bill, but the defendant may, if he thinks it advisable, by way of answer or plea to the bill of revivor, shew cause against the same, viz. that the plaintiff is not heir, &c. that he standeth not in the like case, nor has the like interest as in the former suit, &c.

This bill must pursue the original bill; in case of any material difference, the defendant may demur thereto, and the bill may be dismissed.

If there is any new matter arises from the abatement of the suit, viz. assets in an heir or executor's hands, the bill must pray a discovery, and *sub/jæna* to revive and answer, and in that case the defendant must answer the same.

If any of the plaintiffs in the original cause, refuse to join in bringing a bill of revivor, the others may bring such bill, and make the dissenting plaintiffs defendants thereto.

This bill may be brought by the defendant as well as the plaintiff, and when brought, all matters and proceedings relating to the original bill stand revived.

Bills of review are brought after a cause has been heard, and the decree signed, alledging some errors in the body of the decree, or some new matter that has been found out since the making and passing the same. Bill of review.

Before you file this bill, you must by motion or petition to the *Chancellor*, grounded on affidavit of the facts, obtain an order for so doing, on depositing 50*l.* with the register to answer costs. See page 47.

This bill is in the nature of a writ of error at law; it must state in a concise manner, all the proceedings in the original cause, with the decree made thereon, it must assign proper errors

errors

rors against the decree and proceedings, which must be apparent and manifest on the face of the record.

Original bill
after a de-
cree.

Bills original after decrees. These bills are brought to execute or confirm a decree, to carry an act of parliament into execution, to revive or inforce the performance of decrees, and to put a period to a temporary decree, &c.

INSTRUCTIONS for drawing Bill.

A bill is composed of nine distinct parts, and may be thus distinguished, viz. The direction to the Chancellor i. e. *To the right honourable Henry Lord Apsley, &c.* The introduction, i. e. *humbly complaining, sheweth unto your Lordship, your orator J. K. of, &c. the said plaintiff's case, i. e. that your orator being, &c. the allegations or suggestions made by the plaintiff, i. e. but now so it is, may it please your Lordship, that the said A. R. combining and confederating to and with, &c. the charge of fraud, i. e. all which actings, doings, and pretences of the said confederates, are contrary to equity and good conscience, and tend to the manifest wrong, &c. the clause that gives the court cognizance, i. e. in tender consideration whereof, and forasmuch as your orator cannot have a discovery, &c. but by the aid and assistance of a court of equity, &c. the interrogation of bill, i. e. to the end therefore, that the said A. R. and the rest of the confederates when discovered, &c. may, direct, true, and perfect answer make, &c. the prayer of the bill, i. e. and that your orator may, &c. and may have such further and other relief in the premises, as to your Lordship shall seem meet, &c. the conclusion of the bill, i. e. May it please your Lordship, the premises considered, to grant to your orator, "not only his Majesty's most gracious writ of injunction issuing out of, and under the seal of this*

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honour-

honourable court, to restrain the said *A. R.* from proceeding at law against your orator touching any of the matters in question, but also" *his Majesty's most gracious writ or writs of subpoena, to be directed to the said A. R. &c. and the rest of the confederates when discovered, thereby commanding them, and each and every of them, at a certain day, and under a certain pain therein to be limited, personally to be, and appear before your lordship in this honourable court, and then and there to answer all and singular the premises, and to stand to, perform and abide such order, direction and decree therein as to your lordship shall seem meet, and your orator shall ever pray, &c.*

If an *injunction* is not necessary to be prayed, that part of the above conclusion to a bill, in *Roman* letter, is to be omitted.

If it is a bill of revivor, the conclusion thereof must be thus : Personally to be, *and appear before your lordship in this honourable court, then and there to answer the premises, and shew cause, if they can, why the said suit, and all the proceedings therein, should not stand revived, and be in the same plight and condition as they were in at the time of the abatement thereof, (or at the time of the decease of the said) the person whose death occasions the suit to be revived, and that the said cause and proceedings may be revived, and the said defendants stand to perform and abide, &c.*

If the bill is only to revive, and not to answer, the above words first marked in *Italic* must be omitted.

The solicitor may draw the bill himself, in which he must take especial care to have full and proper information from his client to enable him to form the plaintiff's case; or on instructions given, it may be drawn by council. No bill can be brought in this court before the draught thereof has been perused and settled by
council,

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council, who subscribes and sets his name to the draught thereof. Council's fee for this business is from one guinea to five, according to the length of the bill, and the trouble he has had therein.

PRECEDENTS OF BILLS.

A bill brought by Creditors for a discovery.

Direction of
bill.

*To the Right Honourable
Henry Lord Apsley, &c.*

Introduc-
tion.

Case.

Humbly complaining, shew unto your Lordship, Your orators *T. P.* of, &c. joiner, *W. R.* and *T. R.* of the same parish, bricklayers and copartners, *E. R.* of the same parish, widow, plaisterer, *R. T.* of the same parish, mason, *J. F.* of the same parish, smith, *P. H.* of the same parish, plumber, and *J. G.* of, &c. painter, creditors of *J. B.* late of, &c. gentleman, deceased, *that J. D.* late of, &c. Esq. deceased, being possessed of, interested in, or intituled unto several messuages or tenements, situate and being in or near *Newgate Street* and *Newgate Market* and *Warwick Lane*, within the city of *London*, or in some other place within the said city, by virtue of three several leases for a term of forty years each, two from the Dean and Chapter, and the other from the Dean and Chapter of *St. Paul*, in all which terms several years were then to come, did on or about the day of

depart this life intestate, leaving *Ann*, then the wife of the said *J. B.* his only child; and the said *Ann* soon after the death of her said father, to wit, on or about the day of 1773, obtained letters of administration of all and singular, the goods, chattels, rights and credits of her said father *J. D.* and by virtue thereof

thereof, she the said *Ann*, together with the said *J. B.* her late husband, became intituled unto, and they accordingly did enter upon, and possess themselves of the said leasehold premises among other the personal estate of the said *J. D.* to the amount of several thousand pounds, and much more than sufficient to pay all the just debts of the said intestate: and your orators further shew unto your Lordship, that the said *J. B.* and *Ann* his wife afterwards employed your orators respectively, to do several works and repairs in and upon the said several leasehold messuages and tenements, and to find and provide materials for the same, which amounted to a very considerable sum of money, they the said *J. B.* and *Ann* his wife, then proposing to give your orator *T. P.* a letter of attorney to receive the rents and profits of the premises, and thereout to pay himself and the other creditors for the said work, or to that effect; in confidence whereof, your orators went on in their respective stations, in the said work, and finished the same; but before any such letter of attorney was executed, or any satisfaction made to your orators, or any of them for such work, and materials, the said *J. B.* in or about the month of *March* 1733, departed this life intestate, and soon after his death the said *Ann* obtained letters of administration, out of the prerogative court of *Canterbury*, of all and singular the goods, chattels, rights, and credits of him the said *J. B.* her late husband, and afterwards entered upon all the said leasehold premises, and possessed herself all other the personal estate of the said *J. B.* consisting of ready money, plate, jewels, linen, household stuff, bonds, notes, and other securities, and debts by simple contract, amounting in the whole to a very considerable value, and more than sufficient to pay all his

E

just

just debts, whereupon your orators applied to the said *Ann* for payment of their respective debts; but she the said *Ann* pretending that she had not at that time sufficient to pay the same, did propose to make your orators easy, by making a security by way of mortgage or otherwise, of the said leasehold premises, to or in trust for them, as they should think proper; and to pay interest after the rate of five pounds by the hundred for their respective demands, until money should come in to satisfy the whole; to which your orators having agreed, a draught of a mortgage or security was drawn up and prepared accordingly by the attorney, solicitor, or agent of the said *Ann B.* or by some other person by her order or direction, or with her privity, which having been perused by the person employed by your orators for that purpose, was returned back, in order to be ingrossed and perfected; but the said *Ann* soon afterwards intermarrying with *G. G.* of, &c. gentleman, the said proposed deed for securing the payment of your orators debts to them, was never executed, he the said *G. G.* refusing to join therein, or to give his assent thereto, and the said *G. G.* having in right of his said wife, entered upon the said leasehold premises, and possessed himself of all the personal estate of the said *J. B.* but refusing or neglecting to pay your orators their respective just demands, your orators in or about *Michaelmas* term last, brought their respective actions in his Majesty's court of Common Pleas, against the said *G. G.* and *Ann* his wife, to which they the said *G. G.* and *Ann* his wife pleaded that *J. B.* was in his life time bound unto one *T. D.* by bond, dated the 13th day of *December.* 1732, in the sum of one hundred and ten pounds; and also bound unto one *R. S.* by bond dated the 14th day of *De-*

ember, 1732, in the sum of two hundred pounds, and that such debts were just and true, and that the said *Ann* had fully administered all the goods and chattels of the said intestate *J. B.* except to the value of ten shillings, whereupon your orators signed interlocutory judgments in the said respective actions for the assets of the said *J. B.* when they should so happen, and have since executed writs of enquiry of damages, and obtained final judgments thereupon, for the several and respective sums of money herein after mentioned, (that is to say) your orator *T. P.* for the sum of 118 *l.* your orators *W. R.* and *T. R.* for the sum of 71 *l.* 10 *s.* 9 *d.* your orator *J. G.* for the sum of 27 *l.* your orator *J. F.* for the sum of 20 *l.* 9 *s.* your orator *R. T.* for the sum of 23 *l.* 19 *s.* your orator *P. H.* for the sum of 30 *l.* 9 *s.* 1 *d.* and your orator *E. R.* for the sum of 16 *l.* 19 *s.* 7 *d.* over and besides the cost expended by your orators respectively in obtaining their said several and respective judgments, as by the records of the said respective judgments, to which your orators refer, may appear. And your orators have since, in a fair and friendly manner, applied to the said *G. G.* and *Ann* his wife, to come to a full and true discovery of all the goods, chattels, credits, and other the personal estate of the said intestate *J. D.* and how the same and every part thereof, has been applied and disposed of by them, or either of them, or by the said *J. B.* in his life time, and likewise to have a discovery of all the goods, chattels, credits, and other the personal estate of the said *J. B.* deceased, and how the same and every part thereof, has been applied and disposed of by them, or either of them, or otherwise that they would pay your orators their several demands aforesaid: And your orators well hoped that the said defendants would

Allegations.

readily have complied with such their reasonable request, as in all right and justice they ought to have done; *but now so it is*, may it please your Lordship, that the said G. G. and Ann his wife, combining and confederating to and with J. S. of, &c. Esq; and J. P. of, &c. mercer, and to and with divers other persons to your orators unknown, whose names when discovered, your orators pray may be inserted in this their bill of complaint, with apt words to charge them how to defeat your orators of their just demands: they the said confederates give out and pretend that the said J. D. the intestate, was at the time of his death, greatly indebted to divers persons in several large sums of money, and that he died possessed of little or no personal estate, except the leasehold premises herein before mentioned, and that therefore the said leasehold premises are in the first place liable to the payment of the debts of the said intestate J. D. and that the said leasehold premises, when sold, will hardly be sufficient for the payment thereof; at other times, they admit that there will be sufficient assets of the said J. D. to discharge all his debts, exclusive of the said leasehold premises, or at least that there will be a very great overplus arising out of the said leasehold premises, after the said debts are totally discharged; but then they pretend the said J. B. did not dispose of or alter the leases of the said leasehold premises in his life time; and that therefore the same did never become his property, nor are liable to the payment of his debts, but that the said Ann G. is now possessed thereof, as administratrix of the said J. D. her late father, deceased, and not as administratrix of the said J. B. her late husband, or if the same were liable to the debts of the said J. B. then they pretend that the said J. B. was at
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the time of his death indebted to several persons upon judgments, recognizances, and other specialties, which have exhausted the value of the said leasehold premises, and all other the personal estate of the said *J. B.* and that they have little or no assets left to satisfy the above mentioned bonds, which they pretend to have been given for fair and just debts, and which they have pleaded in bar to the several actions brought by your orators for the recovery of their just debts as aforesaid. Whereas your orators expressly charge that the said *J. B.* did in his life time surrender up, or cause to be surrendered up to the Dean and Chapter of *Westminster*, the said lease and leasehold premises, held of them; and which the said *J. D.* was at the time of his death possessed of, or intitled unto; and did likewise surrender, or cause to be surrendered up to the Dean and Chapter of *Saint Paul in London*, the said lease and leasehold premises held of them, and which the said *J. D.* was at the time of his death possessed of, or intitled unto, and procured new leases of each of the said leasehold premises to be granted unto him the said *J. B.* or to some other person or persons for his use and benefit, by each of the said Deans and Chapters for the terms of forty years each, as by the said several leases in the custody or power of the defendants, or some of them, when the same shall be produced, relation being thereunto had, will fully and at large appear; and your orators further charge that the said *G. G.* and *Ann* his wife, well know that the above mentioned bonds which they have pleaded in bar to the said several actions brought against them by your orators as aforesaid, (if any such there be) were not entered into for money lent, or any other valuable consideration; but were given and set on foot by fraud and collusion,

with an intent to defraud your orators of the several sums due to them, as aforesaid, for the use and benefit of, and in trust for her the said *A. G.* or the said bonds were entered into by the said *J. B.* for the performance and observation of some covenants which were all duly kept and performed by the said *J. B.* to the time of his death, so that neither of the said bonds ever became forfeited, or if the said bonds were entered into for good and valuable considerations, and for the payment of money to the respective persons to whom they were severally given, yet they, and most other of the said *J. B.*'s just debts, or the greatest part thereof, were paid and satisfied in the life time of the said *J. B.* or have been compounded for by the said *G. G.* and *Ann* his wife, or one of them, since his death: and there are some releases or receipts given, or some indorsements or memorandums made either upon the said pretended bonds, or in some books, papers, or writings, in the hands, custody, or power of the said defendants *G. G.* and *Ann* his wife, or one of them, which nevertheless they refuse to discover, or to give your orators any satisfaction therein, but insist on the same as still totally due and unsatisfied; and the said defendants *G. G.* and *Ann G.* do likewise pretend that the said leasehold premises, or some part thereof, stand mortgaged to the defendant *J. S.* for the sum of 1500*l.* but neither the said *G. G.* nor *Ann* his wife, nor the said *J. S.* will discover when such mortgage was made, nor by whom, nor of what part of the said leasehold premises, nor how much of the said mortgage money has been since paid off and satisfied, nor who is in the receipt of the rents and profits of the said leasehold premises, and at other times the said confederates pretend that
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the said *J. S.* by and with the consent of the said *G. G.* and *Ann* his wife, hath assigned over his interest in the said mortgaged premises, to the said *J. P.* for the residue of the term to come therein; and the said defendants *G. G.* and *Ann* his wife, further pretend, that in case the said mortgage was discharged and satisfied, yet that your orators would not be intitled to have any satisfaction out of the said leasehold premises, for that the same were by some deed or deeds, executed by the said *J. B.* in his life time, duly settled upon her, and such children as he should have by her, and that by virtue thereof, she is intitled to the said leasehold premises for the several terms of years to come therein, if she shall so long live. *Whereas* your orators expressly charge, that if any such deed of settlement there be, the same was executed by the said *J. B.* if at all, subsequent to his marriage with the said defendant *Ann*, and without any consideration or any articles of agreement entered into by him, previous to his marriage with her for that purpose, and therefore as your orators are advised, such deed or deeds of settlement, if any such there be, are entirely voluntary, and as against fair and just creditors of the said *J. B.* utterly null and void: and your orators expressly charge, that if any such there are, the same were so made after your orators had repaired and improved the said premises, and that such repairs greatly advanced the value thereof, the same being ready to tumble down, and not in a proper condition for sale or to be let before such repairs were done.: and your orators further charge, that the said defendant *Ann G.* was so sensible that the said deed of settlement, if any such there be, was of no validity, that she had no other right and title to the said mortgaged premises, but as administratrix of her

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said late husband *J. B.* and that subsequent to her said late husband's death, and before her intermarriage with her now husband the defendant *G. G.* she the said *Ann B.* now *Ann G.* took up and borrowed the sum of 150*l.* and upwards, from the said defendant *Mr. J. S.* and as administratrix of her said late husband *J. B.* and the original mortgagees to whom the said premises then stood mortgaged, executed a fresh mortgage to him of the said leasehold premises, for the sum then borrowed of him, together with the sums that had been paid by him to them, in discharge of the former mortgages, which she could not have power to do, if such pretended settlement was valid, and the legal estate of the said leasehold premises was not vested in her; and the said defendants *G.* and *Ann G.* though they will receive upwards of 700*l.* in the sale of the said estate by the improvements made therein, by the work and labour done and performed by your orators thereto, as aforesaid, yet they refuse to pay your orators their said just demands, by which they are to reap so great a benefit, and for that purpose they have made use of divers methods and contrivances to conceal and waste the said intestate *J. B.*'s estate, and have neglected and do refuse to give or exhibit a true and perfect inventory or account of the said *J. B.*'s personal estate, particularly of the ready money, or bank bills for money, *South Sea*, and *East India* bonds, and other securities or notes for money, which were in the said intestate's custody at the time of his death; and of the several sums of money that were at the testator's death due for rent from the several tenants of the freehold and leasehold estates the said intestate died seised or possessed of, although they had been frequently requested so to do; or if the said defendants *George* and *Ann G.* or
either

either of them, have exhibited any inventory or account of the said *J. B.*'s personal estate, the same is false, erroneous, and imperfect : and there are many omissions and under valuations of the goods and things therein contained, whereby the estate and effects of the said *J. B.* are much lessened and sunk, no care having been taken to value and appraise the same after his death, or if there was any appraisement thereof, the same was not made fairly and by indifferent persons and sworn appraisers, nor was such appraisement according to the full and true values of the several particulars whereof the same consisted ; and the said defendants *George* and *Ann G.* have delivered up divers securities for money which were due and owing to the said *J. B.*'s estate, and have taken new securities for the same in their own names, or in the name of one of them, or in the name of some other person in trust for them, or one of them, and by other ways and means they have altered and varied the nature and kind of the said estate, the better to conceal the same from your orators ; *all which* Complaint, *pretences*, actings, and doings of the said several defendants and their confederates are contrary to right equity and good conscience, and tend to defeat your orators of the several sums due to them in manner aforesaid. *In tender* The clause *consideration whereof*, and forasmuch as your that gives orators are remediless in the premises in and cognizance by the strict rules of the common law, in regard in equity. your orators cannot come at a full discovery of all or any of the matters and things herein before charged, but upon the oath of the said several defendants, nor can be admitted to redeem the said mortgaged premises, in order to come at a satisfaction for their several and respective debts, but by the aid and assistance of a court of equity, more especially of this honourable

Interroga-
tion of bill.

court: *To the end therefore* that the said G. G. and Ann his wife, and J. S. and J. P. and the rest of the confederates, when discovered, may true and perfect answer make to all and singular the premises, as fully and effectually as if the same were here again repeated and interrogated; and more especially, that the said Ann G. may set forth the time when the said J. D. departed this life, and whether she is not administratrix of the said J. D. her late father deceased, and when such administration was granted, and whether by virtue thereof, or how otherwise she the said Ann, together with the said J. B. her late husband, did not at any time, and when, enter upon, or possess themselves of the said leasehold premises, or any, and what part thereof, and if there are any, and what debts of the said J. D. the intestate, remaining unsatisfied, except what is, or are, secured by the said mortgage of the said leasehold premises, and whether they the said J. B. and Ann his then wife, did not employ your orators, or any, and which of them, to do any, and what works or repairs in and upon the premises, or any, and what part or parts thereof, and whether such letter of attorney as aforesaid, or any other, and what expedient was proposed, and by whom, for satisfying your orators for their said work and materials, and whether the said J. B. did not die intestate, and when, and whether administration was not thereupon granted to her the said Ann, and whether she the said Ann did not afterwards enter upon, and possess herself of the said leasehold premises, and of other personal estate of the said J. B. and to what amount; and whether she the said Ann did not propose and agree to make any, and what security to your orators, or any, and which of them, for payment of their respective debts, and whether any, and what draught or draughts

draughts was, or were at any time, and when, and by whom, and by whose order, direction or privity, prepared for that purpose, and why, and for what reason the same was not ingrossed and perfected; and whether, as she knows or hath heard, and believes, the premises were in a condition for sale, or to be let, before such repairs were made by your orators as aforesaid; and whether such repairs did not greatly advance the value thereof, or any, and what part thereof, in any, and what particular, to be let or sold, and to what amount in the whole; and whether the same, or any, and what part thereof did not stand empty, or lie untenanted for any, and what time, before such repairs were made, and what profit the same did produce before the same were so repaired, and how the same are now set, let, or otherwise, and how disposed of by the year or otherwise, and to whom, and for what, and whether the same, or any, or what part thereof are sold to, or any, and what contract made for the sale thereof, or of any, and what part thereof, with any person or persons, and whom and when, and for what, and that the said G. G. may set forth whether he did not upon his intermarriage with the said *Ann* his wife enter upon and possess himself of the said leasehold premises, or any, and what part thereof; and that they the said confederates, G. G. and *Ann* his wife may set forth whether, as they know, believe or have heard, the said *J. B.* did not in his life time cause or procure the said old leases of the leasehold premises above mentioned to be surrendered and delivered up, and by whom, and to whom, and whether some new lease or leases bearing date respectively the seventh day of Dec. 1731, or any other, and what leases were not granted by the said Dean and Chapter of *Westminster* to the said *J. B.* or some other person,

son, and whom by name, by his direction and appointment, and for his use and benefit, or upon any, and what other trust, and whether they the said *J. B.* and *Ann* his wife did not at any time, and when, agree with the Dean and Chapter of *Saint Paul* for taking a new lease of the leasehold premises held of them; and whether they the said *J. B.* and *Ann* his wife, or either, and which of them, did not join in the surrendering and delivering up of the said lease, and whether some new lease or leases of the said leasehold premises held of them, was or were not made or granted by the said Dean and Chapter of *Saint Paul* to the said *J. B.* or some other person, and whom by name, by his direction and appointment, and for his use and benefit, or upon any other, and what trusts; and that the said *G. G.* and *Ann* his wife, and the said *J. S.* and *J. P.* may set forth whether such mortgage as aforesaid, or any other, and what mortgage was made to him the said *J. S.* and by whom and when the same was so made, and whether any and what sum of money was advanced and lent to the said *Ann G.* at the time of the making such new mortgage, and whether the same hath been assigned to the said *J. P.* and by whom and when, and for what sum of money; and whether the said *Ann* does not take upon herself to be intitled to the leasehold premises in the said mortgage deed contained, as administratrix of her said late husband *J. B.* and as such to make the same a security to him the said *J. S.* for the money then advanced, and lent by him to her, and that they may set forth what remains due to the said *J. S.* and *J. P.* or either, and which of them, for principal and interest on said mortgage; and if the said defendants *G.* and *Ann G.* shall pretend to be intitled to the said leasehold premises, by virtue of any settlement,

ment, conveyance or assignment thereof from her said late husband *J. B.* then that they may declare and set forth whether such deed or deeds of settlement, conveyance or assignment, were not executed by the said *J. B.* after his marriage with her the said defendant *Ann*, and how long after, and if in pursuance of any, and what articles of agreement previous to her said marriage, and if not, why they insist upon the same in prejudice of your orators and the rest of the just creditors of the said *J. B.* and that they may set forth the date and material contents of such settlement, and that they the said *G. G.* and *Ann* his wife may either admit assets of the said *J. B.* sufficient to satisfy your orators demands, or else that they may set forth a full and true account of all the plate, ready money, household goods, bonds, stock in the several trading companies, and other the effects of the said *J. B.* come to their or either of their hands, custody, or power, or to the hands, custody or power of any other person or persons for their or either of their use or benefit, and how the same hath been paid, applied and disposed of, and when, and by, and to whom, and for what, and whether the same, or any, and what part thereof remains undisposed of, and in whose custody or power, and to what value; and that they may set forth upon what account the bonds above mentioned, which they have pleaded in bar to the several actions brought by your orators as aforesaid were given, and whether any, and what sum of money remains due thereon; and that the said *G. G.* and *Ann* his wife may likewise account for the said sum of 150 *l.* 17 *s.* 11 *d.* received by the said *Ann G.* from the said *J. S.* as aforesaid; and in case the same, together with the other goods and effects of the said *J. B.* deceased shall not be sufficient to answer your orator's demands, with their costs and charges

Prayer or
conclusion.

charges in respect thereof; that then your orators may be at liberty to redeem the said mortgaged premises, and that upon payment of what shall be due to the said *J. S.* or the said *J. P.* for principal, interest, and costs, by your orators, the said leasehold premises may be forthwith sold for the best price that can be gotten for the same, and that out of the money arising by such sale, your orators may be allowed to reimburse themselves the money which they shall so pay to the said *J. S.* and the said *J. P.* for his or their debt and costs, and likewise to have satisfaction thereout for their said several debts and demands, together with all their costs and charges in relation thereto; and that such pretended deed or deeds of settlement, if any such there be, may be set aside, and declared null and void; and that the said *J. S.* and *J. P.* may, upon the terms aforesaid, and the said *G. G.* and *Ann* his wife, may join in such sale of the said leasehold premises for the purposes aforesaid as this honourable court shall direct; and that your orators may have such further and other relief in all and singular the premises as shall be agreeable to equity. *May it please your Lordship* to grant unto your orators his Majesty's most gracious writ or writs of *supæna* to be directed to the said *G. G.* and *Ann* his wife, and *J. S.* and *J. P.* and other their confederates when discovered, thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there to answer all and singular the premises; and further, to stand to, and abide such further orders, directions and decree as to your Lordship shall seem meet; and your orators shall ever pray, and so forth.

JOHN STRACEY.

*To the Right Honourable
Henry Lord Apsley, &c.*

Humbly complaining, sheweth unto your Lordship, your orator *A. B. of &c. Esq;* that in and about the year of our Lord 1748, *C. D.* of ——— in the county of ——— gent. being or pretending to be seised in fee, or of some other good and sufficient estate of inheritance, of and in the manor, messuages, farms, lands, tenements and hereditaments herein after mentioned; and having occasion for money, did apply to your orator, and desire your orator to lend him the said *C. D.* the sum of 1000 *l.* and in order to secure the repayment of the same with interest, after the rate of 5 *l.* by the hundred by the year, did propose to mortgage to your orator the said manor, &c. which he did affirm to your orator were free from all prior incumbrances, save a term of five hundred years in some part of the same premises, which (as the said *C. D.* informed your orator) was then vested in *O. P.* of ——— in the county of ——— Esq; **In trust** for the said *C. D.* his heirs and assigns, and to be disposed of and assigned as he or they should direct; and your orator further sheweth unto your Lordship, that your orator did comply with the said request of the said *C. D.* and did accordingly lend him the said sum of 1000 *l.* and for securing the repayment thereof with interest as aforesaid, by indentures of lease and release bearing date respectively the 10th and 11th days of *April* 1748, and made between the said *C. D.* by the name and description of *C. D.* of, &c. and *M.* his wife, of the one part, and your orator and one *L. M.* of, &c. Esq; of the other part, the said *C. D.* for and in consideration of the sum of 1000 *l.* of lawful, &c. to him in hand paid by

Bill to fore-
close the
equity of
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of a mort-
gaged estate.

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by your orator, and of five shillings paid to him by the said *L. M.* (which sum of 1000*l.* your orator charges was really and truly paid by your orator to the said *C. D.*) did grant, bargain, sell, release and confirm unto your orator and the said *L. M.* (in their actual possession then being by virtue of the said indenture of lease for a year, and by force of the statute for transferring uses into possession) and to their heirs and assigns, all that the manor of *T.* with its rights, members and appurtenances in the county of *S.* and all messuages, barns, buildings, edifices, stables, yards, gardens, orchards, lands, tenements, wood-grounds, leasows, commons, common of pasture, demesne lands, courts baron, courts leet, perquisites and profits of courts, fines, heriots, reliefs, amerciaments, rents, services, escheats, waifs, estrays, deodands, felons goods, warrens, heaths, mines, moors, marshes, patronages and benefices of churches and chapels, advowsons, franchises, privileges, profits, commodities, advantages, emoluments, jurisdictions and hereditaments whatsoever to the said manor belonging or appertaining, or reputed to belong or appertain thereunto; *And* also all that messuage or tenement, with the appurtenances, situate, standing and being in ——— in the said county of ——— on the east side of the said green there; and also all that orchard and close of pasture thereunto adjoining and belonging; and also all those several pieces or parcels of arable land, meadow and grass-ground, and lot-grass, with their appurtenances, lying dispersedly within the common fields, liberties, meadows, parishes, boundaries and precincts of ——— and ——— in the said county of *S.* containing by estimation fourscore acres; and also all those several pieces or parcels of arable land, meadow

dow and pasture or grafs ground, and lot-grafs, with their appurtenances, lying and being dispersedly within the common and open fields, liberties, meadows, parishes, precincts, and territories of ——— and ——— aforesaid, containing by estimation forty-three acres, thentofore in the tenure or occupation of *S. H.* and *W. R.* their assignee or assignees; and also all that messuage, tenement or farm-house, with the appurtenances, situate, standing and being in ——— aforesaid, and thentofore in the possession of *T. A.* yeoman (a messuage or tenement there or then late of *T. P.* on the north-east part thereof, and the messuage or tenement of the said *C. D.* therein and herein before mentioned on the south-east part thereof) which said last mentioned messuage or farm-house was thentofore purchased by the said *C. D.* of and from one *T. A.* and all other the messuages, lands, tenements and hereditaments whatsoever of him the said *C. D.* in possession, reversion, or remainder, situate, lying or being in the parishes of ——— and ——— aforesaid in the said county of *S.* or any of them, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of him the said *C. D.* of, in, and to the same manor, lands and premises, and every part and parcel thereof; To hold the said manor, messuages, farms, lands, tenements, hereditaments and premises, and all and singular other the premises mentioned to be thereby granted and released as aforesaid, with their and every of their appurtenances, unto your orator and the said *L. M.* their heirs and assigns, To the only proper use and behoof of your orator and the said *L. M.* their heirs and assigns for ever: nevertheless, as to the estate of the said *L. M.* and
his

his heirs, in trust for your orator, his heirs and assigns; subject nevertheless to a proviso or condition for redemption in the said indenture of release contained; if the said C. D. his heirs, executors, administrators or assigns, or any of them, should well and truly pay or cause to be paid unto your orator, his executors, administrators or assigns, at or in the—— in the parish of —— in the said county of S. the full sum of —— of lawful money of *Great Britain*, at or upon the —— day of —— next ensuing the date thereof, and now long since past, without any deduction whatsoever, in manner set forth in the said indenture of release; And the said C. D. did in and by the said indenture of release, covenant and agree, to and with your orator and the said L. M. that he and the said M. his wife should and would before the end of *Easter* term next ensuing the day of the date of the said indenture of release, acknowledge and levy (and which was accordingly acknowledged and levied) in due form of law one fine *Sur conuzance de droit come ceo, &c.* to your orator and the said L. M. and the heirs of your orator, of the said manor, lands and premises subject to such redemption as aforesaid; and the said C. D. did further covenant and agree, that the said manors, messuages, farms, lands, hereditaments and premises thereby released as aforesaid, were free from all incumbrances, except other than the said term of five hundred years, of and in the said manor and premises, or the greatest part thereof, then vested in the said O. P. In trust for the said C. D. and his heirs, and to be disposed of and assigned as he or they should direct; which term the said C. D. did thereby direct and declare the said O. P. his executors and administrators, should stand possessed of and interested in, In trust only for your orator and the said

L. M.

L. M. and their heirs, to attend the inheritance of the same premises, subject to such redemption as aforesaid, with a covenant, that in case of failure of payment of the said sum of — according to the said proviso, your orator and the said L. M. might enter upon and enjoy the said mortgaged premises, and the rents and profits thereof, without any interruption of the said C. D. his heirs or assigns, or any other person whatsoever (*here set forth the covenant for further assurance verbatim*) as in and by the said indentures of lease and release duly executed by the said C. D. and M. his wife, now in your orator's custody, and ready to be produced, as this honourable court shall direct, and to which your orator, as also to the record of the said fine, for greater certainty refers himself, may more fully and at large appear; And your orator charges, that the said sum of — or any part thereof, was not paid to your orator or any other person on his account according to the said proviso in the said indenture of release contained, at the time therein mentioned, or at any other time; and your orator further sheweth unto your Lordship, that the said C. D. having a further occasion for money, sometime in or about the latter end of *February* or *March* 1756, again applied to your orator to lend him the further sum of 500 *l.* and in order to secure the repayment of the same with interest after the rate of 5 *l.* by the hundred by the year, offered to charge the said mortgaged premises therewith, which your orator consented to, and accordingly did advance, lend and pay to the said C. D. the said sum of 500 *l.* and for securing the repayment thereof with the interest as aforesaid, by an indorsement made upon the back of the said indenture of release, bearing date the first day of *April* 1756, reciting that the

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the said principal sum of 1000*l.* remained wholly due and unpaid, but that all interest for the same was fully paid and satisfied to the day of the date thereof; and further reciting (and which your orator expressly charges to be true) that the said *C. D.* by his bond or obligation, bearing even date with the said indorsement, became bound to your orator in the penal sum of — conditioned for the payment of the said sum of — with interest for the same, after the rate of — for every hundred pound on the first day of *September* then next ensuing, It is by the said indorsement witnessed, that for better securing the payment of the said sum of — with interest for the same, after the rate of — *per cent. per annum* to your orator, his executors, administrators and assigns, the said *C. D.* for himself, his heirs, executors and administrators, and for every of them, did thereby covenant, promise and agree, to and with your orator, his executors, administrators and assigns, and every of them, that the said sum of — and interest, after the rate aforesaid, to be computed from the day of the date thereof, was and should be placed, charged and secured in and upon the manor, messuages, farms, lands, tenements and hereditaments comprised in the said indenture of release, and that the manor, messuages, farms, lands and hereditaments, with their and every of their appurtenances in the said indenture mentioned, to be released to your orator and his heirs, should remain to your orator, his executors, administrators and assigns, as a security as well for the said sum of — and interest for the same, after the rate of 5 *l.* for every hundred pound by the year, to be accounted from the day of the date thereof, as for the said sum of — secured by the said indenture of release, and the growing interest thereof, after the rate of 5 *l.* for every hundred pounds by the year;
and

and that the said manor, messuages, farms, lands, tenements and hereditaments, or any of them, or any part thereof, should not be redeemed or redeemable until not only the said ——— and the growing interest thereof as aforesaid, but also the said ——— then advanced and lent and the interest thereof as aforesaid, should be fully paid and satisfied to your orator, his executors, administrators or assigns, as in and by the said indorsement on the back of the said release, and the said bond duly executed by the said *C. D.* and to which your orator for greater certainty refers himself, may more fully and at large appear. And your orator further sheweth unto your Lordship, that the said sum of ———, or any part thereof, hath not been paid to your orator, neither was the said sum of ———, or any part thereof, paid to your orator according to the condition in the said in part recited bond at the time therein mentioned, or at any time since; but the said two several sums of 1000 *l.* and 500 *l.* are now due and owing to your orator, together with a great arrear of interest on the said several sums after the respective rates aforesaid; and the said *L. M.* being dead, the estate and interest in the said mortgaged premises is now become absolute in your orator and his heirs, and your orator well hoped that the said *C. D.* would either have paid your orator the said several sums of 1000 *l.* and 500 *l.* and the interest thereof respectively at the rates aforesaid, or would have suffered your orator to have peaceably and quietly held and enjoyed the said premises; and for that purpose your orator hath frequently and in a friendly manner applied himself to the said *C. D.* and requested him to pay the said several sums of 1000 *l.* and 500 *l.* and the interest due for the same respectively, or else quietly and peaceably to deliver up possession to your orator of the said mortgaged premises,
together

together with all deeds, evidences, writings, escripts, and muniments, court-rolls, rent-rolls, and minutes of courts, relating to or concerning the same; and to release all his right, title, and equity of redemption of, in, and to the same premises, to your orator and his heirs; the said *C. D.* well knowing (as your orator charges the truth to be) that the said premises are a very slender and scanty security for the principal and interest now due to your orator thereon; And your orator well hoped the said *C. D.* would have complied with such reasonable request of your orator, as in justice and equity he ought to have done: *but now so it is*, may it please your Lordship, That the said *C. D.* combining and confederating himself to and with the said *O. P.* and divers other persons, at present unknown to your orator, whose names, when discovered, your orator prays may be made parties hereto, with proper and apt words to charge them, how to injure and aggrieve your orator in the premises, and to defraud him of the said principal monies and interest due to him, sometimes gives out and pretends, that the said premises were mortgaged by the said *C. D.* to the said *O. P.* for the said term of 500 years, for securing to him some very considerable sum of money; and that at the time such mortgage was made to your orator as aforesaid, he the said *C. D.* had only the equity of redemption of the same; whereas your orator expressly charges (as the truth really is) that no money was due to the said *O. P.* on such term, but that the said *O. P.* is seised of the said term of 500 years, and his name made use of only as a trustee; and the said term is now vested in him, in trust for your orator and his heirs, to attend the inheritance of the said premises; nevertheless the said *O. P.* refuses to let your orator bring an eject-

ejectment, in his name, for recovery of the premises comprised in the said 500 years term; and at other times the said *C. D.* pretends that he hath confessed judgments, statutes, and recognizances, to several persons for several considerable sums of money, and made several other grants, conveyances, and secret incumbrances, which will affect the said premises, prior to your orator's title to the same, but refuses to discover the same, or to whom he hath so sold, mortgaged or incumbered the premises as aforesaid, or the respective considerations thereof, or the persons to whom he hath confessed such judgments, statutes, or recognizances, and for what sums and what consideration, so that your orator cannot proceed at law for recovery of the said mortgaged premises, the said *C. D.* threatening, in case your orator proceeds at law, to set up the said incumbrances, and the said trust-term of 500 years in the said *O. P.* all which they pretend are prior to your orator's said mortgage; whereas your orator charges, that such conveyances, mortgages or other incumbrances (except the said trust-term) are not prior to your orator's said mortgage (if any such there be) or if any of them are prior to your orator's said mortgage, the same are voluntary and fraudulent, and made without any consideration really and truly paid, and such judgments, statutes and recognizances, were not for the payment of any just debt, but without any consideration, and voluntary, and contrived on purpose to defraud the just creditors of the said *C. D.* All which actings and doings are contrary to equity and good conscience, and tend to your orator's manifest wrong and injury. **In tender consideration** whereof, and forasmuch as your orator hath no means to discover what incumbrances there are upon the said mortgaged premises, or can foreclose
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the equity of redemption thereof, but in a court of equity, where matters of this nature are properly cognizable, and the rather for that your orator's witnesses who could prove the truth of all and singular the premises, are either dead or gone into parts beyond seas intirely unknown to your orator; **To the end** therefore, that the said *C. D.* and *O. P.* and and their confederates (when discovered) may, upon their severall and respective corporal oaths, true, full, and perfect answer make to all and singular the premises, as fully and particularly as if the same were herein again repeated and they interrogated, according to the best of their respective knowledge, information, or belief; and more particularly whether the said *C. D.* was not, in or about the year 1748, or at some other and what time, and when, seised in fee, or of some other, and what estate of and in the manor, messuages, farms, lands, tenements, hereditaments, and premises herein beforementioned, or some and which of them, and whether he did not apply to your orator to borrow the sum of 1000 *l.* or some other, and what sum of money, and propose to secure it with interest as aforesaid, in the manner herein before-mentioned, or in any other, and what manner, and whether your orator did not accordingly advance, and lend to him the said *C. D.* the said sum of 1000 *l.* and whether the said *C. D.* and *M.* his wife, did not execute such indentures of lease and release bearing date respectively the 10th and 11th days of *April* 1748, or some other and what indentures of mortgage of the said premises to your orator, or of any other and what date, and whether the said trust-term of 500 years was not thereby declared and agreed, or how otherwise intended to be vested in the said *O. P.* in trust for your orator and his heirs, to attend and wait
upon

upon the inheritance of the said premises, or for any other, and what trust or purpose, and whether the said *C. D.* did not again, some time in the year 1756, apply to your orator to borrow the further sum of — or some other and what sum of money, and whether your orator did not advance and lend to the said *C. D.* the said sum of — and whether, for securing the repayment thereof with the interest as aforesaid, the said *C. D.* did not execute such bond of such date as is before set forth, or some other and what bond, of the same, or any other, and what date, and whether he did not execute such indorsement on the back of the said release as is before set forth, bearing date the first day of *March* 1756, or some other, and what indorsement or instrument in writing of the same, or such like date, tenor, purport or effect, and may admit the said several indentures of lease and release dated the 10th and 11th of *April* 1748, and the said bond and indorsement made on the back of the said release, dated the first day of *March* 1756, and the payment of the several considerations thereof to be in the same manner they are herein before respectively set forth, or may set forth wherein they materially differ, and may set forth whether the said several sums of — and — or any part of either of them, hath at any time, and when, been paid by any person, and by whom, to your orator, and may set forth how much is due to your orator for principal and interest on his said several securities, and may set forth what incumbrances there are upon the said mortgaged premises, and when, and by whom the same were charged or incumbered, and who claim the same respectively, and may set forth the nature, kinds, and qualities thereof, and whether the same are by absolute sale, mortgage, statute-merchant, statute-staple, judgment,

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ments, recognizances, or how otherwise, and the dates, tenor, and short contents of such several incumbrances, and of the deeds, records, or other instruments or writings treating of or relating to the same, and may set forth the respective considerations thereof, and when, where, and in whose presence such considerations were respectively paid, and whether in specie, bills, or how otherwise, and whether the said incumbrances, or any, and which of them are now unpaid and unsatisfied, and how much money is now due on the same respectively, and that the said *C. D.* may be decreed to pay and satisfy to your orator the said several sums of — and — and all interest due and to grow due thereon after the respective rates aforesaid, by a short day to be appointed by this honourable court, together with your orator's costs; and in default thereof, that the said *C. D.* and all persons claiming under him, may be foreclosed of and from all equity of redemption or claim, in and to the said mortgaged premises, and every part thereof, and may deliver over to your orator all deeds, charters, evidences, writings, muniments, court rolls, rent-rolls, and minutes of courts whatsoever, relating to, or concerning the said manor, messuages, farms, lands, tenements, hereditaments, and premises; and that the said *O. P.* may set forth what right or title he hath or claimeth of the said premises, or any and what part thereof, and whether he is not a trustee for your orator, and why he refuses to let your orator bring an ejectment in his name, in order to recover possession of the said premises, and that the said term of 500 years may be declared to be in trust for your orator and his heirs, to attend the inheritance of the said premises, and that your orator may have such further and other relief in the premises, as to
your

your Lordship shall seem proper, and shall be agreeable to equity and good conscience. May it please your Lordship, &c.

ARTHUR JONES.

*To the Right Honourable
Henry Lord Apsley, &c.*

Humbly complaining sheweth unto your Lordship your orator *A. B.* of, &c. That your orator having occasion to borrow the sum of 1000 *l.* did apply himself for that purpose to *C. D.* of, &c. who agreed to lend to your orator the same; and your orator, for securing the re-payment thereof, with interest, did agree to mortgage to the said *C. D.* the messuages, &c. and premises herein after mentioned, and accordingly your orator did execute to the said *C. D.* one indenture bearing date on or about the — day of — 1749, and which was made between your orator of the one part, and the said *C. D.* of the other part, and by the said indenture your orator, in consideration of the sum of 1000 *l.* to him in hand paid, by the said *C. D.* did demise, &c. unto the said *C. D.* his executors, administrators and assigns, all that, &c. To hold unto the said *C. D.* his executors, administrators and assigns for the term of 99 years, subject to a proviso or condition of redemption on payment of the said sum of 1000 *l.* with interest for the same after the rate of 4 *l.* 10 *s.* per cent. per annum on the — day of — 1750; as in and by the said indenture of mortgage, in the custody of the said *C. D.* when produced, will more fully and at large appear; and your orator further sheweth unto your Lordship, that your orator hath paid all interest for the said sum of 1000 *l.* till *Midsummer* 1762, to the said *C. D.* but the said *C. D.* in order to distress your orator, hath caused

Bill to re-
deem a
mortgage.

declarations in ejectment to be delivered to the tenants in possession of the said premises, and doth threaten that he will get into possession thereof, and receive the rents and profits of the said premises, although your orator hath always been, and still is ready to pay to the said C. D. what is due to him for principal and interest on the said mortgage, and did actually on or about the — day of — 1770, tender and offer to the said C. D. the said sum of 1000*l.* together with all interest due for the same, at the time the said tender was made, being the sum of —, being in full for all interest then due for the said sum of 1000*l.* at 4*l.* 10*s.* by the hundred by the year; and also the sum of 25*l.* 6*s.* 2*d.* for the costs of the said declarations; and your orator well hoped that the said C. D. would have received the said several sums of money so offered and tendered to be paid to him by your orator as aforesaid, and either have delivered up unto your orator the said mortgage deed to be cancelled, or have re-assigned the same to your orator, as in justice and equity he ought to have done: *but now so it is*, may it please your Lordship, that the said C. D. combining and confederating himself to and with divers other persons, at present unknown to your orator, whose names when discovered your orator humbly prays may be inserted in this his bill of complaint, with apt and proper words to charge them; he the said C. D. (in order to deprive and defeat your orator of the benefit of redeeming the said mortgaged premises) does pretend and give out in speeches, that your orator did not borrow of the said C. D. the said sum of 1000*l.* nor execute the said mortgage deed to the said C. D. for securing the repayment thereof with interest as aforesaid, but does pretend that
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the said sum of 1000 *l.* was paid to your orator in consideration of the absolute purchase of the said premises for the said term of 99 years ; and at other times he does admit that a deed of the same date as above-mentioned, and made by the same parties, was executed by your orator, but that your orator did thereby absolutely dispose of the said term of 99 years without such proviso of redemption as before set forth ; whereas your orator chargeth, and so the said *C. D.* well knows, as the truth really is, that the said sum of 1000 *l.* was borrowed upon the terms aforesaid, and upon no other consideration whatsoever, and that such deed with such proviso as above-mentioned was executed by your orator as aforesaid, for the securing the repayment of the said sum of 1000 *l.* pounds with interest as aforesaid, and that no other deed was executed by your orator relating to the said sum of 1000 *l.* or otherwise, than what your orator has above set forth ; and at other times the said *C. D.* does admit that such deed was executed as above mentioned, but does pretend that at the time of the tender above-mentioned, great arrears of interest were due and owing from your orator to the said *C. D.* amounting to the sum of ——— and upwards, whereas your orator chargeth, and so the truth really is, that no more than the sum of ——— was due and owing from your orator to the said *C. D.* for the interest of the said 1000 *l.* at the time of the said tender ; and upon the pretences aforesaid the said *C. D.* refuses to come to any manner of account with your orator, or to reconvey the said premises to him, and is now proceeding at law, in order to get into possession of the said premises ; *All which actings, doings and pretences of the said C. D. and his*

confederates are contrary to equity and good conscience, and tend to your orator's manifest wrong and injury. *In tender consideration whereof*, and forasmuch as your orator is altogether remediless in the premises by the strict rules of the common law, and cannot have any discovery or relief touching the matters and things aforesaid, without the aid and assistance of this honourable court, where matters of account and redemption of estates are properly cognizable and relievable; *To the end therefore*, that the said C. D. and his confederates (when discovered) may upon his and their corporal oaths (to the best of his and their remembrance, knowledge, and belief) true, perfect, and direct answer make to all and singular the matters and things aforesaid, as fully as if the same were herein again repeated, and they thereunto particularly interrogated, and more especially that the said C. D. may set forth whether your orator did not, and when, apply to him to borrow the said sum of 1000 *l.* or any other sum of money; and whether such deed was not executed by your orator, with such proviso for the repayment of the said sum of 1000 *l.* with interest at 4 *l.* 10 *s.* *per cent. per annum*, how as above-mentioned, or how otherwise, and whether your orator did not constantly, and to what time, pay the interest that became due for the said sum of 1000 *l.* to the said C. D. or some person or persons, for his use and by his order or direction, and whether your orator did not make such tender of such several sums of money, as above-mentioned, to the said C. D. or how otherwise, and that the said C. D. may set forth what was due and owing to him on the said mortgage for principal and interest, and his costs at law respectively, at the time of the said tender, and that he may set forth why, or for what reason, he refused to receive the said several

several sums of money so tendered as above-mentioned; and that your orator may be at liberty to redeem the said mortgaged premises; and that the said C. D. upon your orator's paying to him what shall appear to be due to him, for principal and interest on the said mortgage, together with his costs at law at the time the said several sums of money were so tendered to him by your orator as aforesaid, which your orator hereby offers to pay, and that thereupon the said C. D. may reconvey and reassign to your orator the premises aforesaid, free and clear of all incumbrances done by him, or by any person claiming by, from, or under him; and that your orator may have and receive such further and other relief in the said premises, as the nature of this your orator's case doth or may require, and as to your Lordship shall seem meet; *May it therefore please your Lordship* (the premises considered) to grant unto your orator his Majesty's most gracious writ or writs of *sub-pœna* to be directed to the said C. D. and his confederates when discovered, thereby commanding them, and every of them, at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there, upon their several and respective corporal oaths, true and perfect answer to make to all and singular the premises; and further to stand to and abide by such order and decree therein as to your Lordship shall seem meet. And your orator shall ever pray, &c.

STEPH. CUMMINGS.

To the Right Honourable
Henry Lord Apsley, &c.

Bill brought
by a hus-
band as ad-
ministrator
to his wife,
to obtain a
leasehold
estate de-
volved to
her as heir
at law to
her father.

Humbly complaining, sheweth unto your Lordship, your orator *E. N.* of, &c. administrator of all and singular the goods, chattels, rights, and credits of *Mary* his late wife deceased, who was one of the daughters of *J. E.* late of, &c. deceased, by *Mary* the late wife of the said *J. E.* also deceased, that the said *J. E.* being possessed of or otherwise well and sufficiently entitled unto a certain piece or parcel of ground, with a brick messuage or tenement, and other erections, buildings, and improvements thereon made, or built, at in the said county of for the remainder of a term of 89 years, thereof granted unto him the said *J. E.* by indenture, bearing date on or about the 10th day of *August*, which was in the year of our Lord 1704, and to commence from the 24th day of *June* then last, at or under the yearly rent of 5 *l.* payable for the same as therein mentioned. And the said *J. E.* being minded to make some provision for his wife and children, if they survived him, by indenture, bearing date on or about the 31st day of *March*, which was in the year of our Lord 1705, made or mentioned to be made, between the said *J. E.* of the one part; and *T. A.* and *J. K.* of the other part; the said *J. E.* for the considerations therein mentioned, did assign, transfer, and set over unto the said *T. A.* and *J. K.* their executors, administrators, and assigns, the said herein before mentioned indenture of lease and the premises thereby demised, to hold for the remainder of the said term of 89 years therein then to come, upon the several trusts therein and herein after mentioned, that is to say, upon trust to permit him the said *J. E.*

to receive the rents and profits thereof for his life, and from and after his death, then upon trust to permit and suffer *M. E.* his wife to receive and take the rents, issues, and profits thereof, for the term of her natural life, and from and after the death of the survivor of them the said *J. E.* and *Mary* his wife, then upon trust to assign the said premises to such of the children of the said *J.* and *M. E.* as should be living at the death of the survivor of them, as in and by the said indenture duly executed by the said *J. E.* now in the custody or power of *J. T.* relation being thereunto had, may more fully appear. And your orator further sheweth unto your Lordship, that the said *J. E.* departed this life, some time on or about the 20th day of *November*, which was in the year of our Lord 1720, intestate, leaving the said *M.* his widow and only two children, to wit, *Elizabeth*, who intermarried with *W. B.* of, &c. and the said *Mary* your orator's said late wife, and no other issue then living; and that soon after the death of the said *J. E.* the said *Mary* his widow procured letters of administration of all and singular the goods, chattels, rights, credits, effects, and personal estate to be granted to her by and out of the proper ecclesiastical court. And the said *J. E.* being at the time of his death possessed of, interested in, or otherwise well and sufficiently entitled unto a very considerable personal estate, consisting (amongst other particulars) of and in several leasehold messuages or tenements, grounds, buildings, and other premises situate, lying, and being in the parish of — aforesaid, or elsewhere, in the county of *Middlesex* and city of *London*, or one of them, wherein were long terms of years to come at the death of the said *J. E.* annuities, ready money, money due upon mortgages, judgments, bonds, bills, and, other specialties, and upon notes, and otherwise by

The Modern Practice of the

simple contract, arrears of rent, stocks in divers public and private funds and companies, plate, jewels, rings, watches, linen, household goods, and other goods, chattels, rights, credits, and effects, much more than sufficient to pay all his just debts and funeral expences, with a very great overplus, she the said *M. E.* by virtue of the aforesaid letters of administration, and by virtue of or under the aforesaid indenture of settlement, did shortly after the death of the *J. E.* enter upon and possess herself of all the said intestate's leasehold messuages or tenements, and of all other his personal estate, consisting of the several particulars herein before specified or mentioned, and continued in the possession and receipt of the rents, issues, and profits thereof, until the time of her death, which happened at or about the time herein after mentioned; but never exhibited any inventory thereof into proper ecclesiastical court, or into the common serjeant's office of the city of *London*, as she ought to have done, he the said *J. E.* being a freeman of the city of *London*. And your orator further sheweth unto your Lordship, that the said *J. E.* dying intestate as aforesaid, the said *Mary* your orator's said wife, as one of his daughters and next of kin, thereupon became entitled to a distributive share of her said late father's personal estate, not included in the said indenture of settlement, either by virtue of the statute for distribution of intestate's personal estates, or according to the custom of the city of *London*. And your orator further sheweth unto your Lordship, that before any distribution had been made of any part of the said intestate *J. E.*'s personal estate, the said *M. E.* his widow and administratrix departed this life, to wit, on or about the 26th day of *December*, in the year of our Lord 1740, having, as is pretended;
first

first duly made and published her last will and testament in writing, bearing date on or about the 8th day of *June*, 1739, and thereby after reciting or taking notice, that she was possessed of the several messuages or tenements, with the appurtenances in ——— aforesaid, which she held by several leases thereof granted unto the said *J. E.* her late husband, deceased, wherein there was a long term then to come; and also of a piece of land fronting ——— in the parish of ——— which she held by lease from *J. H.* she thereby gave and bequeathed all her said messuages or tenements, with the appurtenances in ——— aforesaid, and the said piece of land which she held from the said *J. H.* together with the several leases by which she held the same, unto her two friends *Mr. R. H.* and *Mr. D. C.* to hold to them, their executors, administrators, and assigns, during such terms as should be therein to come at the time of her decease, upon trust to permit and suffer her daughter *E. B.* to receive and take to her own separate use, one moiety of all the rents and profits thereof, during so long of the said terms as her said daughter should happen to live, she from time to time paying one half of the ground rent and repairs of the said premises: and after the death of her said daughter *E. B.* then upon trust, that her said moiety of the said premises should go and be assigned to and amongst such child or children, as she should have living at the time of her decease, and for want of such issue, that then the same should go and be assigned to her other daughter *Mary* the late wife of your orator (then *M. F.*) and upon trust, that the said trustees should permit and suffer her other daughter the said *Mary* your orator's said late wife, to receive and take to and for her own separate use, the other moiety of all the rents, issues and profits of the said premises, during

The Modern Practice of the

so long of the respective terms therein, as she the said *Mary* your orator's said wife should live, she the said *Mary* paying one half of the ground rent and repairs of the said premises, and after the decease of her said daughter *Mary*, then upon trust, that her said moiety of the said premises should go and be assigned to and amongst such child or children, as she should have living at the time of her decease; and for want of such issue, that then the same should go and be assigned to her sister the said *E. B.* and in case both the said testatrix's said daughters should die without issue, that then the whole thereof should go to such person or persons as the survivor of them her said two daughters should think fit to give or dispose thereof by her will; and in default thereof, then to the executors or administrators of such survivor; and gave all the residue of her personal estate to be equally divided between her said two daughters, *Elizabeth* and *Mary*, and of her said will, constituted and appointed the said *R. H.* and *D. C.* joint executors; and the said *M. E.* afterwards by a codicil to her said will, bearing date on or about the 16th day of *November*, 1739, did revoke the said bequest of the residue of her personal estate; and did by the said codicil give and devise all the residue of her estate whatsoever (after payment of her debts, funeral charges, and legacies) unto the said *R. H.* and *D. C.* upon trust, to pay, apply, and dispose of one half of such residue of her estate, to and for the separate use and benefit of her said daughter *E. B.* or to such person or persons as she should by any writing under her hand direct or appoint, and that the same should not be subject or liable to the intermeddling, debts, or engagements of her husband, or he to intermeddle therewith, and upon trust, to pay and apply
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the other moiety of the said residue of her estate unto her said daughter *Mary*, or to such persons and for such uses only as her said daughter *Mary* should by writing signed by her notwithstanding her coverture appoint, and willed that the same should not be subject to the debts, controul, or engagements of any husband she should thereafter marry, as in and by the said will and codicil, relation being to them respectively had, may more fully appear: and your orator further sheweth unto your Lordship, that the said *R. H.* and *D. C.* refusing to prove the said will, and having renounced the said executorship, letters of administration of all and singular the goods, chattels, effects, and personal estate of the said *M. E.* *with her said will and codicil thereunto annexed*, were afterwards duly granted by and out of the prerogative court of the Archbishop of *Canterbury*, unto the said *Mary* your orator's said late wife, deceased, as daughter and next of kin of the said *M. E.* but before the said *Mary*, your orator's said wife had possessed herself of any part of the personal estate of the said *M. E.* deceased, by virtue of or under the aforesaid letters of administration, she the said *Mary* your orator's said late wife, departed this life intestate and without issue, to wit, on or about the 24th day of *November*, in the year of our Lord 1742, and shortly after her death, your orator procured letters of administration of her personal estate, to be granted to him, by and out of the prerogative court of the Archbishop of *Canterbury*, by virtue whereof, your orator is become entitled to all his said late wife's right, title, share and interest of, in, and to the personal estate of the said *J. E.* her said late father, deceased: and your orator hath likewise procured letters of administration of the goods, chattels, and personal estate of the said *J. E.* unadministered by
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the said *M. E.* to be granted unto your orator by and out of the said prerogative court of the Archbishop of *Canterbury*: and your orator further sheweth unto your Lordship, that on or about the 9th day of *January*, which was in the year of our Lord 1742-3, the said *Elizabeth* the other daughter of the said *J. and M. E.* and wife of the said *W. B.* died intestate, leaving the said *W. B.* her husband and only one child, *viz. Elizabeth B.* an infant now living; and the said *W. B.* since the death of his said wife, hath procured letters of administration of the goods, chattels, rights, credits, and personal estate of the said *Mary E.* unadministered by the said *M. N.* your orator's said wife, to be granted to him by and under the seal of the prerogative court of the Archbishop of *Canterbury*, and by virtue or under colour thereof, hath entered upon, and possessed himself of, as well the said several leasehold messuages or tenements and premises at aforesaid, which belonged to the said *J. E.* at the time of his death, and received the rents, issues, and profits thereof; and hath likewise possessed himself of all other the personal estate of the said *J. E.* which remained unapplied or unconverted at the time of the death of the said *Mary E.* and also of all and singular other the personal estate and effects, whereof the said *M. E.* died possessed of, interested in, or entitled unto, and which at the time of her death consisted of and in divers leasehold messuages or tenements, lands and premises, ready money, money due upon mortgages, judgments, bonds, bills, and other specialties, and upon notes, and other simple contract debts, stocks in divers publick and private funds and companies, plate, jewels, watches, rings, pictures, linen, household goods, and other goods, chattels, effects, and personal estate, to a very
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considerable amount or value; and much more than sufficient to answer and make good the distributive shares which ought to have been made by her, by and out of the personal estate of the said *J. E.* which came to her hands, unto her said two daughters, the said *Elizabeth* and *Mary*, and all other her just debts and funeral expences, with a very considerable overplus: and your orator well hoped, that the said *W. B.* would not only have permitted your orator to enter upon and receive and take to his own use and benefit one moiety or half part of the rents and profits of the said leasehold premises, comprised in the said indenture of the 31st day of *March* 1705, and to which your orator's said wife became entitled immediately upon the death of the said *M. E.* her mother, but would also have paid your orator one moiety of the rents and profits thereof, received by him since the death of the said *M. E.* and would likewise have accounted with your orator for his said late wife's distributive share of the several other leasehold messuages or tenements, which belonged to the said *J. E.* at the time of his death, and which were not comprised in, or included in the said indenture of the 31st day of *March*, 1705, and for the rents and profits thereof, received by the said *M. E.* in her lifetime, or by him the said *W. B.* since her death, and also for all other the personal estate of the said *J. E.* come to the hands or possession of the said *Mary E.* his widow and administratrix, and would have paid and satisfied your orator, his share and proportion thereof, to which your orator is become entitled as administrator to his said wife, as in all justice and equity he ought to have done, your orator having divers times in a fair and friendly manner, both by himself and his friends or agents, and by letters otherwise applied to him for that purpose.

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But now so it is, may it please your Lordship, that the said *W. B.* combining and confederating to and with *Elizabeth B.* daughter and only child of the said *W. B.* by the said *Elizabeth* his wife, and with *J. C. F. G.* and *T. H.* the several tenants of the said leasehold messuages or tenements which belonged to the said *J. E.* and to and with divers other persons at present to your orator unknown, whose names when they shall be discovered, your orator prays may be inserted herein, and they made parties hereto, with apt matter and words to charge them, how to wrong and injure your orator in the premises, and to defeat your orator of his share and interest of and in the estate of the said *J. E.* and having prevailed on the said several tenants to attorn and pay their respective rents of the said intestate's said leasehold estates to him the said *W. B.* doth absolutely refuse to come to any manner of account with your orator for the said intestate's personal estate, or for the rents or profits of the said leasehold estates, or to pay your orator any part or share thereof, or to let your orator into possession of any part of the premises comprised in the said indenture of the 31st of *March 1705*, sometimes pretending that the said *J. E.* never executed the said indenture, or any other deed or indenture, whereby he conveyed, limited, or disposed of any part of his leasehold estates, to, for, or upon such or the like uses, trusts, intents, or purposes, as are herein before mentioned, or in case he did, which the said confederates *W. B.* and *Elizabeth* his daughter, sometimes admit to be true, yet they then pretend that such deed or settlement was not valid or binding, as to the said *Mary* his widow, but that she, notwithstanding the said settlement, on his death, became entitled by virtue of the custom of the city of *London*, to
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one third part of his whole personal estate, and that only one third part thereof belonged to his said two daughters *Elizabeth* and *Mary*, equally between them; and that the other third part thereof was distributable equally amongst the said *Mary* the widow, and the said *Elizabeth* and *Mary*, the two daughters of the said *J. E.* Whereas your orator doth charge and humbly insist that the said settlement was legal, valid, and binding on the said *Mary E.* and that she the said *Mary E.* was thereby excluded from any benefit under the custom of the city of *London*, and that upon the death of the said *J. E.* the said *Elizabeth* and *Mary*, his two daughters, became entitled by virtue of the custom of the city of *London*, to one moiety or half part of all his leasehold and other personal estate, not included in the said settlement, and the other moiety thereof ought to have been divided and distributed to and amongst the said *Mary E.* the widow, and the said *Elizabeth* and *Mary* the two daughters of the said intestate *J. E.* and that upon the death of the said *Mary E.* your orator's said wife became entitled to one moiety or half part of all and singular the premises comprised in the said settlement, or deed of the 31st day of *March* 1705. But the said confederates do sometimes pretend and insist, that upon the death of the said *J. E.* she the said *Mary E.* became entitled to all his leasehold and other personal estate in her own right, and that she was not in any sort liable or accountable to her said daughters for any part or share thereof; but how, or by what means she became so entitled, they refuse to discover; and although at other times they admit that your orator's said wife was entitled to such share thereof as aforesaid, yet they then pretend that your orator or his said wife in her lifetime, received her

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her share thereof, or full and ample satisfaction for the same, or that your orator or his said wife have possessed themselves of part of the personal estate of the said *J. E.* and *Mary E.* or one of them, of a greater amount or value than the share of your orator's said wife of and in his personal estate would amount unto; whereas your orator charges, and so the said confederates well know the truth to be, that your orator or his wife never did receive any part or share of the personal estate of the said *J. E.* or any satisfaction for the same; nor ever possessed themselves of any part of the personal estate of the said intestate *J. E.* or of the said *Mary* his widow, or either of them, *save only of some very small and inconsiderable part thereof, which your orator hereby offers and submits to account for.* And the said confederates do likewise pretend that the said *Mary E.* had full power to dispose of all and every part of the leasehold, and other personal estate of her said late husband, who died intestate, in such manner as she hath taken upon herself to do, in and by her said pretended will, and insist that your orator ought not to seek any remedy or satisfaction for any share of his the said *J. E.*'s leasehold, or other personal estates, in regard as they pretend, though very untruly, your orator hath submitted to the will of the said *Mary E.* and to accept the bequest thereby made in favour, or for the benefit of your orator's said wife in lieu, or satisfaction of her share or interest in the said intestate's estate; whereas your orator doth charge and humbly insist that the said *Mary E.* had no power whatsoever, either by will or otherwise, to dispose of the share or interest of your orator's said wife, of, or in the estate of the said *J. E.* deceased, and that in case she did make such will, as is herein before mentioned, or any other will, whereby she

she took upon herself to dispose of the estate of the said *J. E.* yet that your orator never acquiesced under the said will, nor submitted thereto; and therefore the same ought not in any sort to affect or prejudice your orator's right, title, interest, or claim, in, or to the said intestate *J. E.*'s estate; all which the said confederates do sometimes admit, and that your orator is entitled to such share or interest in the said *J. E.*'s estate, as is herein before for that purpose mentioned and set forth; but then they the said confederates, and in particular the said *W. B.* doth pretend that all the leasehold and other personal estate which the said *J. E.* died possessed of, interested in, or entitled unto, was but of a very small value, and not sufficient to pay all his just debts and funeral expences, or if the same was sufficient for that purpose, yet that there was but very little or no surplus remaining after payment thereof; and pretends that the said leasehold estates of the said *J. E.* were in mortgage at his death, for some considerable sum or sums of money; and that he the said *J. E.* was at his death indebted unto several persons his creditors in several considerable sums of money on judgments, bonds, bills, notes, or other securities, or otherwise, by simple contract: whereas your orator doth charge, that the said *J. E.* died possessed of, interested in, or entitled unto a very large personal estate, consisting of such leasehold houses and other particulars as aforesaid, all which afterwards came to the hands, custody, power, or possession of the said *Mary E.* his widow and administratrix, or of some other person or persons in trust for her; and that there were not any mortgage or mortgages on any part of his said leasehold estate, subsisting at the time of the death of the said *J. E.* and that the said *J. E.* died very little, if
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any thing indebted to any person or persons whatsoever; and at other times the said *W. B.* doth admit that the said *J. E.* died possessed of such leasehold and other personal estate as aforesaid, and that the same afterwards came to the hands, custody, power or possession of the said *Mary E.* his widow and administratrix, and that the same was much more than sufficient to pay his debts and funeral expences; but then he pretends that the whole, or the greatest part thereof had been spent and consumed by the said *Mary E.* in her lifetime, and that she the said *Mary E.* did not leave assets sufficient to answer and make good the personal estate of the said *J. E.* come to her hands, or in case she did leave assets sufficient for that purpose, yet that the same hath not yet come to his hands, custody, power, possession, or knowledge, or to the hands, custody, or possession of any other person or persons in trust for him, or by his order, or for his use; and likewise pretends that she the said *Mary E.* died greatly indebted unto several persons on mortgages, bonds, bills, and other specialties of a superior nature to your orator's demands, and more than her personal estate come to his hands will be sufficient to answer and pay. Whereas your orator charges the truth to be, that the said *Mary E.* died possessed of, interested in, or entitled unto a very considerable personal estate, and more than sufficient to answer and make good the personal estate of her said late husband come to her hands, and to pay and satisfy all other her just debts and funeral expences, all, or the greatest part whereof hath since come to the hands, custody, or possession of the said *W. E.* and your orator doth further shew and charge, that your orator during the lifetime of the said *Mary E.* and by her order or direction, or by and with her privity

privity and consent, did and performed divers repairs in and about the said leasehold messuages or tenements, which belonged to the said *J. E.* at his death, upon which account there became and still remains due to your orator the sum of or thereabouts, for which the said *W. B.* absolutely refuses to pay your orator, or to make him any satisfaction for the same, although your orator hath frequently applied to him for that purpose, and the said *J. C. &c.* the tenants of the said intestate's said leasehold estate, persist in paying their rents for the said premises unto the said *W. B.* and refuse to pay any part thereof to your orator, although your orator hath frequently applied to them for that purpose; all which actings, doings, and pretences of the said confederates are contrary to all right, equity, and good conscience, and tend to the manifest wrong and injury of your orator. *In tender consideration whereof*, and forasmuch as your orator is utterly remediless in the premises in and by the strict rules of common law, your orator's witnesses who could prove the truth of all and singular the premises, being either dead, or gone into parts remote beyond the seas, and to your orator unknown, so that your orator cannot have any benefit of their testimony at any trial to be had at common law, nor can have any relief in the premises, save in a court of equity before your Lordship, where matters of this nature are properly cognizable and relievable; *to the end therefore*, that the said confederates may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the premises, as fully and particularly as if the same were herein repeated, and they thereunto again interrogated; and more especially that they may set forth and discover, whether as they know, be-
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lieve or have heard, the said *J. E.* did not execute such indenture as is herein before mentioned to bear date the 31st day of *March* 1705, of such purport or effect, or for such purposes as before mentioned, or of any other, and what date, purport, or effect; and whether he the said *J. E.* did not die intestate at or about the time herein before mentioned, or at any other time, and when, and what issue he had living at the time of his death; and whether he was not at the time of his death possessed of, interested in, and entitled unto such leasehold messuages or tenements, and other personal estate, consisting of such particulars as are herein before mentioned, or of any other, and what leasehold messuages or tenements, and other personal estate, and of what particulars the same consisted; and whether letters of administration of the said *J. E.*'s personal estate were not at any time, and when, granted by any and what ecclesiastical court, unto the said *Mary E.* his widow, or to any other person, and whom; and whether she the said *Mary E.* did not, by virtue of the said indenture of the 31st day of *March*, 1705, and of the said letters of administration, or how otherwise possess herself of the whole leasehold messuages or tenements, and other personal estate of the said *J. E.* or of any, and what part or parts thereof; and whether she, or any, and what other person or persons, for or on her behalf, did not continue in the possession and receipt of the rents and profits of the said leasehold premises and other personal estate of the said intestate *J. E.* until the time of her death; and whether any and what inventory or account of the said intestate's personal estate was at any time, and when, made or taken, and whether the same or any, and what inventory or account thereof was ever exhibited into any and what ecclesiastical

ecclesiastical court, or into the common serjeant's office of the city of *London*, and by whom, and when; and may set forth why such inventory or account was not so made, taken, or exhibited, as they know or believe; and may set forth what debts the said *J. E.* owed at his death, and to whom, and for what, and how, or in what manner secured; and whether the same or any and what part thereof hath been since paid or satisfied, and when, by whom, and to whom in particular; and whether, as they know or believe, the said *Mary* your orator's said late wife did not, upon the death of the said *J. E.* her father, become entitled to such distributive share of his personal estate, as is herein before mentioned in manner as aforesaid, or to any other, and what part or share thereof, and how or in what manner, and whether any distribution was at any time, and when, made of any and what part of the said intestate *J. E.*'s personal estate, and when, by whom, and to whom, and for what reason the same was not so done; and may also set forth when the said *Mary E.* died, and whether she did not make such will and codicil as herein before set forth, or any other, and what will or codicil, and whether letters of administration with the said will annexed, were not afterwards duly granted by the prerogative court of the Archbishop of *Canterbury*, unto the said *Mary* your orator's said late wife, and whether your orator's said wife did not depart this life, at or about the time herein before for that purpose mentioned, or at any other time, and when, and whether she did not die intestate, and without leaving any issue living at the time of her death, and whether your orator hath not procured letters of administration of her personal estate to be granted to him, by and out of the prerogative court of the Archbishop of
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Canterbury, or how otherwise, and whether by virtue thereof, or how otherwise your orator is not become entitled to his said late wife's share and interest of and in the personal estate of the said intestate *J. E.* and whether your orator hath not procured letters of administration of the goods and chattels of the said intestate *J. E.* unadministered by the said *Mary*, your orator's said late wife, to be granted unto your orator, by, and out of the prerogative court of the Archbishop of *Canterbury*, or by and out of any and what other ecclesiastical court; and whether he the said *W. B.* did not intermarry with *Elizabeth*, one of the daughters of the said *J. E.* and whether she the said *Elizabeth* did not depart this life, at or about the time herein before for that purpose mentioned, or at any other time, and when in particular, and whether she did not leave issue living at the time of her death, only one daughter, to wit, the said *Elizabeth B.* or any other, and what issue, and whether she the said *Elizabeth* the wife of the said *W. B.* did not die intestate, or how otherwise, and who is, or are her representative or representatives, and whether he the said *W. B.* hath not procured letters of administration of the goods, chattels, and personal estate of the said *Mary E.* unadministered by the said *Mary*, your orator's said late wife, to be granted to him, by and out of the prerogative court of the Archbishop of *Canterbury*, or by and out of any other and what ecclesiastical court; and whether by virtue thereof, or how otherwise he hath not entered upon, and possessed himself of the several leasehold messuages or tenements, which belonged to the said *J. E.* at the time of his death, and whether he hath not received the rents, issues, and profits thereof, and of all other personal estate of the said *Mary Edwards*, or of the greatest or any and

and what part thereof; and may set forth a particular account and rental of the several leasehold messuages or tenements, which belonged to the said *J. E.* at the time of his death, and who then was, or were, and ever since have, or hath been the tenant or tenants thereof, and at, or under what yearly or other rents, the same, or any part thereof, have or hath been at any time, and when, since the death of the said *J. E.* let, and to whom in particular, and what is the full and real value thereof in the whole, as they severally know or believe; and that the said *W. B.* may either admit assets of the said *Mary E.* come to his hands, sufficient to pay and satisfy your orator his share of the personal estate of the said *J. E.* which came to the hands of the said *Mary E.* or otherwise, that he may set forth a full, true, and just account of all and singular the goods, chattels, rights, credits, effects, and personal estate, which the said *Mary E.* died any way possessed of, interested in, or entitled unto, with the particular natures, kinds, quantities, qualities, true and real values thereof, and of each particular part or parts thereof, which have at any time come to the hands, custody, power, possession, or knowledge of the said *W. B.* or to the hands, custody, power, or possession of any other person or persons, and of whom by name, in trust for him, or by and with his direction, assent, consent, privity, or procurement; and how, by whom, to whom, when, and for how much money the same and every part, parcel, and particular thereof hath been sold or disposed of, and whether for the true and real value thereof, or for as much as could be got for the same, or how otherwise, and what is become thereof, and of every part and parcel thereof; and what debts or sums of money were due or owing to the said *Mary*

E. at her death, from any person or persons, and from whom by name, and upon what securities, or how otherwise, and how much he hath got in or received on account thereof, and from whom, and when, and may also set forth what debts the said *Mary E.* really owed at the time of her death, and to whom, and upon what security or securities, and when made, given, and executed, and for what consideration really paid, and by whom, and to whom, and when in particular, and how much she hath really paid on account thereof, and to whom, when, where, and in whose presence; and whether your orator hath not at any time or times, and when, and how often applied to the said *W. B.* to let your orator into possession of, and to permit him to receive and take one moiety or half part of the rents and profits of the said leasehold premises, comprised in the said indenture of the 31st day of *March*, 1705 and to pay your orator one moiety of the rents and profits thereof, received by the said *W. B.* and also to account with your orator for the personal estate of the said intestate *J. E.* and to pay your orator his share thereof; and whether he hath not refused so to do, and for what reason; and whether your orator did not during the life-time of the said *Mary E.* do and perform, or cause to be done and performed, any and what repairs, on any, and what part of the leasehold estate, late of the said *J. E.* and whether as they know or believe, there did not remain due to your orator for the same, at the time of the death of the said *Mary E.* such sum of money as is herein before mentioned, or any or what sum of money, and whether the same doth not still remain due and owing to your orator, and whether the said several tenants do not still continue to pay their respective rents unto the said *W. B.* or unto any other person, and

and whom, and whether they have not respectively refused to pay the same, or any part thereof to your orator; and that your orator may be let into possession and have quiet enjoyment of one moiety of the leasehold premises, comprised in the said indenture of the 31st of March, 1705, and that the said *W. B.* may account with, and pay your orator one moiety of the rents and profits thereof, accrued due and received by him since the death of the said *Mary E.* and that he may be compelled to come to a fair and just account with your orator for the personal estate of the said intestate *J. E.* which came to the hands, custody, power, or possession of the said *Mary E.* his widow and administratrix, or to the hands, custody, power, or possession of any other person or persons *in trust* for her, and may pay your orator his distributive share thereof; and that your orator may be paid the said sum of for the repairs of the said premises, and that in the mean time, and until the said account be taken, a receiver may be appointed to receive the rents and profits of the leasehold estates of the said intestate *J. E.* and that your orator may have such further and other relief in all and singular the premises, as shall be agreeable to equity and good conscience, and as to your Lordship shall seem meet. *May it please, &c.*

E. UMFREVILLE.

*To the Right Honourable
Henry Lord Apsley, &c.*

Humbly complaining, sheweth unto your Lordship, your oratrix *C. H.* of, &c. spinster, that one *W. E.* of, &c. gentleman, did for three or four years last past, make his addresses to your oratrix, by way of courtship in marriage, A bill for relief against a release obtained in consequence of a promise of marriage.

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riage, and the said *W. E.* having made several solemn assurances and promises of his sincerity and affection to and for your oratrix, so far prevailed upon your oratrix as to gain her consent to such marriage: and your oratrix sheweth, that she relying upon the fidelity and honour of the said *W. E.* was also prevailed upon by him to advance, lend, and pay at several times during the said courtship to him the said *W. E.* or to his use, divers sums of money to the amount of 1000*l.* and upwards, and also during the time of the said courtship, your oratrix was prevailed upon by the said *E.* to supply and furnish him with, at and upon her own expence and credit, sundry sorts of goods, such as holland, cambrick, silk stockings, and divers other kinds, to the amount or value of 100*l.* and upwards; and the said *W. E.* still prosecuting his courtship, and continuing to make great professions of respect and kindness to your oratrix, requested your oratrix to give him a release and discharge for the sums of money and goods so advanced and delivered as aforesaid, insinuating at the same time, that as he the said *W. E.* and your oratrix was soon to become man and wife, it would be of little or no use or avail to her to have the aforesaid debt to your oratrix standing out against him; and your oratrix putting an entire confidence in the sincerity and honour of the said *W. E.* and not doubting but he had a real intention to marry your oratrix, did upon the motives aforesaid, comply with the said request, and actually did set her hand to some paper writing of the said *W. E.*'s drawing or procuring, importing as your oratrix believes (but what in particular your oratrix cannot exactly remember or set forth some acquittance or discharge for the said several sums of money so advanced and delivered by your oratrix, though at the same

time,

time, as your oratrix expressly charges, there was not one farthing of money or other valuable consideration ever paid or offered to be paid by the said *W. E.* to your oratrix upon the account of, or for any of the matters aforesaid: and your oratrix further sheweth unto your Lordship, that some time after her signing the paper or writing above mentioned, your oratrix found to her great surprize, that the said *W. E.* declined to marry your oratrix, and that he never had any real intention so to do; whereupon your oratrix made frequent application by her agents and friends to him the said *W. E.* for repayment of the said several sums of money lent and advanced by your oratrix as aforesaid, as also for a satisfaction for the said goods. But now so it is, may it please your Lordship, that the said *W. E.* combining and confederating himself to and with divers persons unknown to your oratrix, whose names when discovered, your oratrix prays may be inserted in this her bill; with apt words to charge them, how to defraud and defeat your oratrix of the said several sums of money and goods, doth absolutely refuse to make your oratrix any the least satisfaction for the same, and whenever the said *W. E.* hath been charged with the receipt of the said money and goods, he sometimes would deny the same, and sometimes gave, and still doth give doubtful and ambiguous answers thereto, on purpose to avoid any evidence being given against him, upon his confession or admission; and this being a transaction in secret between your oratrix and the said *W. E.* and no other person or persons privy either to the loan of the said money or delivery of the goods, he doth upon that account put your oratrix to defiance touching the premises; and sometimes the said *W. E.* pretends and insists, that in case the said money and goods were really and *bona fide* advanced, paid,

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and delivered as herein before set forth, yet your oratrix hath now no pretence or foundation to make any demands upon him in respect either of the said goods or money, for that as he insists, your oratrix hath given him an absolute release and discharge for the same; and that such release will be a bar to any right or demands your oratrix can set up upon that account; and at other times the said *W. E.* pretends he never made courtship to your oratrix as aforesaid, or ever intended to marry your oratrix, or ever made any promises or assurances so to do. Whereas your oratrix doth charge, as the truth really is, that the said *W. E.* did make such courtship and promises of marriage to your oratrix as herein before are mentioned, and that the same was so done only to get what money, goods, and effects from your oratrix he could defraud your oratrix of, under such specious colours and pretences. And your oratrix also charges that the said promises of marriage made by the said *W. E.* to your oratrix, were the only motive and inducement to your oratrix to lend and supply him the said *W. E.* with the said money and goods which she did actually advance and deliver to him, as also to her signing and giving such release or receipt as the said *W. E.* insists upon; and therefore your oratrix humbly hopes and is advised, if any such release there be, the same in a court of equity shall be no bar to your oratrix's said demands, but be deemed and taken to be fraudulent and void in itself: All which actings, pretences and doings of him the said *W. E.* and other the confederates tend to the manifest wrong and injury of your oratrix. In tender consideration whereof, and for that your oratrix is utterly remediless in the premises at the common law, and the same being a transaction only between your oratrix and the said *W. E.* and no person or persons privy
to

to the same, so as to be able to bear testimony thereof, your oratrix can have relief only in this court by a discovery of the truth of the said premises, upon the oath of him the said *W. E.* and for that matters of fraud are properly cognizable and examinable before your Lordship. *To the end* therefore, the said *W. E.* and other the confederates when discovered, may true, full, and perfect answer make to all and singular the premises, as if the same were herein again more fully interrogated and repeated, and more especially that the said *W. E.* may distinctly answer hereto, not only to his knowledge, but to the best of his belief, and may set forth, whether he did not make such or any, and what other addresses and courtship to your oratrix as aforesaid, or pretended so to do, and made any and what promises or assurances to marry your oratrix, or whether he did not endeavour to make your oratrix so to believe, and whether during the said courtship, or at any other time or times, and when, your oratrix did not supply and advance, lend, or pay to him the said *W. E.* several and what sum or sums of money at several and what time or times in particular, as he knows or believes to the amount of 1000 *l.* and upwards, or to what other value, or whether your oratrix did not deliver or cause to be delivered the goods herein before mentioned, or what other, and to what value, to him the said *W. E.* and who paid for, or is answerable for such goods, and what was the true or real motive or inducement of your oratrix's advancing or delivering the said money or goods, and whether your oratrix hath given any, and what release, acquittance, or discharge for the said money or goods, and when, and before whom, and by what arts, persuasions, and insinuations, your oratrix was prevailed upon to lend and procure such money

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and goods, or to give such release and discharge for the same, and whether at the time of giving such pretended release, or at any other time, and when he paid any, and what sum of money, or made your oratrix any, and what satisfaction in respect of the said money or goods, or ever paid any valuable consideration for the same, and why he refuses so to do, and whether he insists upon such release and discharge, and may set forth the same in *hæc verba*, and who drew or procured the same, and are witnesses thereto, and whether any person or persons, and who by name was or were privy to the loan of the said money, or delivery of the said goods, or to any part thereof, or to your oratrix's giving or signing such pretended discharge or release as aforesaid, and whether your oratrix was made acquainted with the true meaning and import of the same; and that the said *W. E.* may be compelled by a decree of this honourable court to account to your oratrix,

and make her satisfaction for the said money and goods, together with interest respectively for the same, from the time the same were advanced and delivered as aforesaid, and that the said discharge or release (if any such there be) may be set aside and delivered up by the said *W. E.* to your oratrix to be cancelled, and that your oratrix may have such further relief in the premises, as to your Lordship may seem meet and proper, according to equity and good conscience. May it please your Lordship, to grant to your oratrix his Majesty's most gracious writ or writs of subpœna, to be directed to the said *W. E.* thereby commanding him at a certain day, and under a certain pain therein to be limited, personally to be and appear before your Lordship in this honourable court, then and there to answer all and singular the premises, and further to stand to, and abide such

such further order and decree, as to your Lordship shall seem meet. And your oratrix shall ever pray, &c.

A. JONES.

To the Right Honourable
Henry Lord Apsley, &c.

Humbly complaining sheweth unto your Lordship your orator *T. B.* son of *A. B.* of *D.* in the county of *S.* gentleman, deceased, an infant under the age of twenty-one years, to wit, of about the age of ten years, by *T. T.* his uncle and next friend, that *J. D.* of *M.* in the county of *S.* merchant, being seised and possessed of a very considerable real and personal estate, did on or about the fourth day of *June* in the year of our Lord 1750, duly make and publish his last will and testament in writing; and thereby, amongst other things, devised and bequeathed as follows: [*here set forth the devise verbatim as in the will*] and that upon or soon after the death of the said testator, to wit, on or about the 10th day of *June* 1750, the said *R. R.* and *J. J.* (*the executors*) duly proved the said will in the prerogative court of the Archbishop of *Canterbury*, and took upon themselves the burthen and execution thereof; and by virtue thereof possessed themselves of all the said testator's real and personal estate, goods, chattels, and effects, to the amount of three thousand pounds and upwards: and your orator further sheweth unto your Lordship, that he hath by his said uncle and next friend, several times since his said legacy of five hundred pounds was due, applied to the said *R. R.* and *J. J.* to have the same paid or secured for your orator's benefit; and your orator well hoped that the said *R. R.* and *J. J.*

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would have complied therewith, without suit, as in conscience and equity they ought to have done. *But now so it is, may it please your Lordship*, that the said R. R. and J. J. combining and confederating together to and with divers other persons, as yet to your orator unknown, whose names when discovered, your orator prays may be herein inserted as defendants, and they made parties hereto, with apt words to charge them, how to injure and oppress your orator, the said confederates respectively do absolutely refuse to pay or secure the payment of your orator's said legacy, sometimes pretending that the said testator did not make any such will; and at other times they admit that the said testator made such will, and that they have proved the same, and possessed themselves of all his real and personal estate; but then they pretend that the same was very small and inconsiderable, and not near sufficient to pay and satisfy his the said testator's just debts, legacies and funeral expences, and that they have applied and disposed of the same towards satisfaction thereof; and at the same time the said confederates do respectively refuse to set forth and discover what such real and personal estate was, or the particulars whereof the same consisted, or the value thereof, or how much thereof they have so applied, and to whom, and for what paid, or what is become thereof particularly; whereas your orator doth charge the truth to be that the said testator died possessed of such real and personal estate to the full value aforesaid; and which was much more than would pay all his the said testator's just debts, legacies and funeral expences; and the said confederates or one of them have possessed and converted the same to their own uses, without making any satisfaction to your orator for his said legacy. All which actings and doings

doings of the said confederates are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orator : In tender consideration whereof, and for that your orator is remediless in the premises, at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this nature are properly cognizable ; **To the end therefore** that the said confederates may respectively, full, true, direct, and perfect answer make, upon their respective corporal oaths, according to the best of their respective knowledge, information, and belief, to all and singular the matters and charges aforesaid, as fully in every respect, as if the same were here again repeated, and they thereunto particularly interrogated ; and more especially that they may respectively set forth and discover, according to the best of their knowledge, remembrance, information and belief, whether the said testator *J. D.* duly made and executed such last will and testament in writing, of such date, and to such purport and effect as aforesaid, and thereby bequeathed to your orator such legacy of five hundred pounds as aforesaid, or any other, and what last will, of any other, and what date, and to any other, and what purport or effect particularly, and that they may produce the same, or the probate thereof, to this honourable court, as often as there shall be occasion ; and whether by such will or any other, and what will, the said testator appointed any and what other executors by name, and when the said testator died, and whether he revoked or altered the said will before his death, and when, and before whom, and in what manner, and whether the said confederates, or one, and which of them, proved the said will, and when, and in what court, and that they may respectively

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tively set forth whether your orator, by his said father and next friend, hath not several times, since his said legacy was payable, applied to them to have the same paid or secured to be paid for his benefit, or to that effect; and whether the said confederates, or one and which of them, refused or neglected to comply with such your orator's requests, and for what reasons respectively, and whether such refusal is grounded upon the pretences herein before charged, or any, and which of them, or any other, and what pretences particularly, and that the said confederates may admit assets of their said testator come to their hands sufficient to satisfy your orator's said legacy, and subject thereto, or otherwise may set forth a particular account of the real and personal estate, goods, and effects of which the said testator died possessed or intitled unto, and the particulars whereof the same consisted, and the values thereof, and how much thereof they have applied in discharge of his the said testator's debts, legacies, and funeral expences, and to whom, and for what paid, and what is become thereof particularly, and whether the said testator did not die possessed of real and personal estates, goods and effects to the value of three thousand pounds and upwards, or what other value, and whether the same was not much more than would pay all his just debts, legacies, and funeral expences, and that they may also set forth a just and true account of all such debts and sums of money as were really due and owing, by and from their said testator, at the time of his death, and to whom by name, and on what security or securities, and how, and on what account such debts were respectively contracted, and which of them now remain unpaid and unsatisfied; and that they may be compelled by a de ree of this honourable court to pay your
orator's

orator's said legacy of five hundred pounds, and that the same may be placed out at interest for your orator's benefit, until your orator attains his age of twenty-one years, and that the said five hundred pounds may then be paid him, and that, in the mean time, the interest thereof may be paid to your orator's said uncle *T. T.* towards the maintenance of your orator; and that your orator may have such further and other relief in the premises as the nature of this case shall require, and as to your Lordship shall seem meet. May it please your Lordship, &c.

C. YORKE.

The above precedents will sufficiently direct the young practitioner in drawing any original, amended, or cross bill, see page 61; and the only alteration required in a bill of injunction from an original bill, is in the prayer thereof, wherein you must pray a writ of injunction as well as a writ of subpœna. For the particular form of which, see page 70.

*To the Right Honourable
Henry Lord Apsley, &c.*

Humbly complaining, sheweth unto your Lordship, your orator *T. K.* one of the sons of *J. K.* late of, &c. Esq; deceased, that your orator, together with *R. K.* his brother, as two of the sons and heirs at law of the said *J. K.* their father, did on or about the 4th day of June, in the year of our Lord 1770, exhibit their original bill of complaint in this honourable court against *O. M.* and *L. O.* as defendants, for an account of the rents and profits of the real estate of the said *J. K.* in the said bill mentioned, to one half part whereof he was intitled, and also for an account of his personal

Supplemental bill brought to deliver up deeds and writings.

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personal estate, as he the said *J. K.* died intestate, and your orator and the said *R. K.* were two of his children, and your orator and the said *R. K.* his brother having such title thereto respectively as in the said bill is alledged; and that your orator might be let into a redemption of his father's real estate, upon paying what (if any thing) should appear justly due, and for relief. And afterwards the said defendants *O. M.* and *L. O.* being served with process of *subpoena*, they did accordingly appear to and answer the said original bill, and the said answers were replied unto, and issue being joined, several witnesses were examined; but before publication was passed in the said cause, your orator hath discovered, and your orator by way of supplement doth now hereby charge, that the said *O. M.* now or late had in his custody or power, or at some time or times had seen or read some deed of settlement or writing, and particularly a deed bearing date in or about the year of our Lord 1742, of and concerning the real estate of the said *J. K.* the father, which said deed of settlement, or some other deed or writing to such purport or effect, was made on the marriage of the said *J. K.* the father, with *M.* his first wife long since deceased, who was the sister of the said *O. M.* and thereby or by some other deed or writing the said real estate of the said *J. K.* or great or some part thereof, was so settled and limited, as that after the death of the said *J. K.* the father, without issue by the said *M.* the same was to be to the use of the issue or heirs of the body of the said *J. K.* the father; and he the said *J. K.* the father had issue only one child by the said *M.* his wife (to wit) *A. K.* who died long since without issue and unmarried, but he the said *J. K.* the father, by *F.* his second wife, left issue two sons (to wit)

your

your orator and the said *R. K.* and your orator and the said *R. K.* are now the only heirs of the body of the said *J. K.* the father, and intituled to the same by and under the said deed of settlement, or other deed or writing as aforesaid; and there happening some differences between the said *J. K.* the father in his lifetime, and the said *O. M.* and there being a bill exhibited in this honourable court in relation thereunto, he the said *O. M.* as your orator hath lately, and since issue was joined as aforesaid, discovered that he the said *O. M.* did in his answer to the said bill of the said *J. K.* the father, admit that he had in his custody several deeds and writings relating to or concerning the said real estate, and particularly the said deed of settlement made on the marriage of your orator's said father with the said *M.* in which he the said *O. M.* was a trustee; and he the said *O. M.* did in and by the same answer to the said bill of the said *J. K.* the father declare and say, that in case the said *J. K.* the son should die without issue and under age, the lands settled on the issue of the said *A. K.* the father's first marriage, would come to the said *F.*'s children, as heirs of the body of the said *J. K.* the father, as in and by the said bill of the said *J. K.* the father, and the said *O. M.*'s answer thereunto, remaining as of record in this honourable court, doth and will more fully or at large appear: but the said deed of settlement, and the said other deeds and writings, have been all along concealed from your orator, and he the said *O. M.* as he was a trustee named in the said settlement, ought to have discovered and delivered up the same unto your orator, and thereby it doth and will appear, that your orator and his said brother *R. K.* are tenants in tail of and in the said premises; and that the same
ought

ought to be divided between them ; and if the said deed of settlement is not now to be produced, the same hath been fraudulently torn, burnt or destroyed, but how or when, or by whom, he the said O. M. doth refuse to discover. **To the end therefore,** that they the said O. M. and L. O. may answer all and every the matters and things herein before charged by way of supplement, and that he the said O. M. may discover and set forth, whether, as he knows or believes, he at any time, and when, and how long ago, had the said deed of settlement in his custody, or power, or any other, and what deed, paper, or writings to the effect or purport herein before mentioned and set forth, and what is become of such deed of settlement, and all other the deeds, papers and writings before mentioned, or any or either, and which of them, as he the said O. M. knows or believes, and when he last saw the said deed of settlement, or the said other deeds, papers, and writings, or any or either, and which of them ; and that the said deed of settlement, and the said other deeds, papers and writings may be delivered up safe and uncanceled, and that your orator may be relieved in the premises as the nature and circumstances of his case shall require ; may it please your Lordship, &c.

J. WILBRAHAM.

To the Right Honourable
Henry Lord Apsley, &c.

Humbly complaining shew unto your Lordship your orator and oratrix *A. B.* of, &c. and *M.* his wife, which said *M.* was one of the daughters and coheirs of *T. C.* late of, &c. widow deceased, and likewise one of the sisters and coheirs of *J. C.* late of, &c. Esq; deceased, that the said *T. C.* being seised and possessed of divers lands, tenements, and hereditaments in fee-simple, situate, lying and being at ———— afore said, of the yearly value of 500*l.* or thereabouts; and being minded to make some provision for her family, she by some deed or instrument duly executed by her, conveyed and settled the same in the manner following, *to wit.* to herself for life without impeachment of waste, and from and after her decease to the said *J. C.* her eldest son, and the heirs male of his body; and from and after his decease without issue male, to *T. C.* her other son, and the heirs male of his body; and for default of issue male of the said *T. C.* then to her own right heirs, as in and by the said deed or instrument of settlement, had your orator and oratrix the same to produce, and to which for greater certainty therein your orator and oratrix crave leave to refer, doth more fully and at large appear; and your orator and oratrix further shew unto your Lordship, that some short time after she had executed the said settlement as afore said, *to wit.* in the year 1740, she the said *T. C.* departed this life leaving issue the said *J. C.* and *T. C.* her said two sons, and five daughters, namely, *M.* your oratrix, *E. A. G.* and *S.* and that the said *J. C.* being tenant in tail of the said premises,

Bill of discovery brought to enable the parties to find out a title, and set aside a recovery and will suffered and made by a lunatic, &c.

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he thereupon entered upon the same, and took possession thereof, and held and enjoyed the same to the time of his death; and your orator and oratrix further shew unto your Lordship, that the said T. C. and S. C. respectively died unmarried in the lifetime of the said J. C. and that the said J. C. departed this life on or about the twenty-second day of *June* 1748, unmarried and without any issue of his body, and that he did no act in his lifetime whereby the said estate-tail became docked, or the remainders in the said settlement barred, and that by means thereof the said premises on his death by the said settlement became vested in the said M. your oratrix and the three other surviving daughters of the said C. T. as her right heirs, and ought to be held and enjoyed in copartnership by them; and your orator and oratrix further shew unto your Lordship, that immediately upon the death of the said J. C. the said A. your oratrix's said eldest sister, under pretence that she was thereunto privileged by priority of birth, entered into and took possession of the said premises, and hath enjoyed the same, and taken the rents and profits thereof to her own use ever since; and your orator and oratrix further shew unto your Lordship, that before your orator's intermarriage with the said M. his said wife, a partnership in trade had been entered into and carried on for seven years by and between the said A. and his said wife, that during the said partnership the sum of 1000 l. was borrowed of Mrs. S. D. of — in the county of — a defendant herein after named on the said partnership account; that upon his concluding the treaty of marriage with the said M. the said A. agreed that she would retain the said partnership effects to her own use, and in consideration thereof would take the payment of the said

faid 1000 *l.* to the faid Mrs. *D.* on herself, and would alone become responsible to her for the same, and that in consequence thereof, upon their faid marriage an instrument or writing was executed between them for discharging the faid partnership, and for the faid *A.*'s indemnifying your orator from the faid 1000 *l.* so borrowed of the faid Mrs. *D.* as aforesaid; and the faid *A.* having fraudulently got the faid instrument or writing into her custody or power, refuses to produce the same, intending by her concealment thereof, to retain the faid partnership effects to her own use, and to throw the burthen of the faid debt upon your orator; and your orator and oratrix charge, that on the faid discharge or dissolution of the faid partnership between the faid *A.* and your oratrix, the faid partners were possessed of a very considerable stock in trade, and divers considerable debts were standing out and owing from several persons to the faid partnership, amounting to a very great value, all or the greatest part whereof the faid *A.* hath either caused to be got in for her use, or hath personally received the same; and your orator being intitled in the right of his faid wife to one fourth or quarter part of the faid premises, and also to a moiety of the faid partnership effects as aforesaid, he hath often applied to the faid *A. W.* and in a friendly manner intreated her to let him into the possession thereof, and to account with him for the rents and profits thereof from the death of the faid *J. C.* and to pay the faid debt so due to the faid Mrs. *D.* as aforesaid, or otherwise to deliver up the faid instrument or writing to your orator, that he may thereby be enabled to do himself right in case he should be sued for the same, or to account with him for a moiety of the faid partnership effects; and your orator well hoped,
that

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that the said *A.* knowing that your orator was well entitled thereunto as aforesaid, would have complied with your orator's request, as in justice and equity she ought to have done: **But now so it is,** may it please your Lordship, that the said *A.* combining and confederating herself to and with the said *S. D.* and to and with divers other persons, at present unknown to your orator and oratrix, whose names, when discovered, your orator and oratrix humbly pray may be inserted in this their bill of complaint, with apt words to charge them as parties hereunto, how to defeat your orator and oratrix of the said fourth or quarter part of the said premises so come to your oratrix as aforesaid; and to load your orator with the said partnership debt, so due and owing to the said *S. D.* she the said *A.* pretends, and gives out in speeches, that she is well intitled to the whole premises, by virtue of some devise or general words in the will of her said mother, and that her said mother *C. T.* never made any such settlement thereof, as is herein before set forth; at other times she admits, that the said *C. T.* did duly execute such settlement; and that the said *J. C.* upon her death, entered upon the said premises, and enjoyed the same as tenant in tail thereof, and that he, by fine and recovery levied and suffered by him, docked the said intail, and barred the said remainders, and by indentures declaring the respective uses thereof, had declared the same to be to the use of himself and his heirs for ever, and that being by means thereof seised of an absolute estate in fee-simple in the said premises, he, by his last will and testament in writing, duly executed, and bearing date on or about the 20th day of *June* 1746, gave and bequeathed unto the said *A.* the sum of 2000 *l.* and to all his other sisters the sum of 100 *l.* a-piece, and to one Mrs. *C. S.* the sum of 1500 *l.* and devised the

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the remainder of his estate, whether real or personal, unto the said *A.* and her heirs for ever, and that she therefore claims the said whole premises, under the will of her said brother *J. C.* who she insists had full power to dispose thereof as he thought proper; whereas your orator and oratrix charge, and doubt not but they shall be able to prove the same to be true, that the said *J. C.* was utterly incapable of levying any fine, or suffering any recovery in order to dock the said intail, and bar the said remainders so limited by the said settlement as aforesaid, or of making any will to dispose of his real estate, if any such he was entitled to, other than as aforesaid; he the said *J. C.* having been a lunatick without any lucid intervals from the age of twelve years, and continued so to the time of his death; and your orator and oratrix charge, that if it shall appear that the said *J. C.* had an estate in fee-simple in the said premises, which your orator and oratrix by no means admit, yet that for the reason last mentioned, he could by no means lawfully dispose thereof, either by will or otherwise, but the same are descended and come to his said four sisters *A. M. E.* and *G.* as his heirs at law; and that your orator in the right of his said wife is thereby become entitled unto one fourth or quarter part thereof, and ought to be put in possession of the same, and to have an account of the rents and profits thereof from the death of the said *J. C.* her said brother; at other times she the said *A.* denies that any sum of money whatsoever was borrowed of the said *S. D.* by her and your oratrix *M.* on the said partnership account, or that any instrument or writing was executed by her upon your orator and oratrix's said intermarriage, to indemnify your orator therefrom, but insists that the said sum of 1000 *l.* was the sole and separate debt of your oratrix
M.

M. and borrowed for her own use independent of the said partnership, and being in possession of the said instrument or writing, sets your orator at defiance as to any remedy he can have against her for the same, or any part thereof; and the said *S. D.* knowing that the said *A.* conceals and secrets the said instrument or writing, and confederating with her how to oppress your orator therein, threatens to sue your orator for the same, and to compel him to make payment thereof; and the said *S. D.* admits the same to be the sole and proper debt of the said *A.* although your oratrix became a joint security with her for the same, or otherwise that the same was borrowed on the said partnership account, and that she by virtue of the said agreement between her and your orator, and for the considerations aforesaid, had taken the same upon herself, and hath often acknowledged that she knew the circumstances of the said *A.* to be very good, and that she should rely singly upon her for the payment of the said money, or to that or the like effect; at other times the said *A.* pretends, that the said stock and effects of the said partnership was very trifling and inconsiderable at the time that the said partnership was so discharged or dissolved as aforesaid, and not an equivalent for her discharging or indemnifying your orator, from paying his share and proportion of the said debt, but denies that your orator in right of his said wife, is intitled to a moiety or any other part thereof; whereas your orator and oratrix strictly charge, that the said partnership effects were of a considerable value, and the said *A.* very well knew the said agreement to be a very beneficial one on her part, and hath often promised your orator and oratrix to perform the same, or to account with your orator for a moiety of the said partnership effects; at other times the said *S. D.* pretends
and

and insists, that she has some mortgage or other incumbrance on the said premises at ————
aforesaid, but refuses to discover to your orator and oratrix by whom the same was made or done, and for what sum or sums of money really and *bona fide* advanced and lent by her thereon; whereas your orator and oratrix charge, that if any such mortgage shall appear to be made or done, the same was made and done by the said *A.* solely since the death of the said *J.* and can only affect her interest in the said premises. All which actings, doings and pretences of the said confederates are contrary to equity and good conscience, and tend most apparently to your orator and oratrix's great injury and wrong: **In tender consideration** whereof, and forasmuch as your orator and oratrix are altogether remediless in the said premises at common law, and cannot be relieved therein but by the favourable aid and assistance of a court of equity, where matters of fraud and of this nature are properly to be discovered and inquired into, and the rather, for that your orator and oratrix's witnesses who would prove the truth of the said premises, are either dead or gone into parts remote and beyond the seas, and unknown to your orator and oratrix, by means whereof your orator and oratrix are deprived of the benefit of their testimonies: **To the end** therefore, that the said *A. C.* and *S. D.* and the rest of the confederates, when discovered, may true, distinct, and perfect answer respectively make to all and singular the matters and things herein and hereby charged, and that in as full and ample a manner as if the same were here again particularly repeated and interrogated; and that the said *A. C.* in particular may set forth and discover whether the said *T. C.* your oratrix's said late mother, was not seised in fee-simple, or how otherwise, of the said premises
at

at ——— aforefaid of the yearly value of 500 l. or thereabouts, or of what other yearly value, and whether ſhe did not make ſuch ſettlement thereof as is herein before ſet forth, or any other and what ſettlement thereof, and of what date the ſame is, and of what kind and nature, and between what parties and by whom executed, and what are the names of the ſubſcribing witneſſes thereto, and in whoſe cuſtody or power the ſame now is or late was, and when and whether the ſaid T. C. is not ſince dead, and when ſhe died, and what iſſue ſhe left behind her at the time of her death, and whether immediately upon her death the ſaid J. C. her eldeſt ſon as tenant in tail under the ſaid ſettlement, or how otherwiſe, did not enter upon the ſaid premies, or any and what part thereof, and take poſſeſſion thereof, and hold and enjoy the ſame to the time of his death; and whether the ſaid T. C. and S. C. did not reſpectively die in the life-time of the ſaid J. unmarried, and whether the ſaid J. did not, at or about his age of twelve years, or at or about any other and what age, become a lunatick without any lucid intervals, and whether he was at any time, and when afterwards, capable of levying any fine, or ſuffering any recovery to dock the ſaid intail, and bar the ſaid remainders in the ſaid ſettlement, and when and whether he was of ſound mind and memory at the time when he made and executed his ſaid will, and how long he had been ſo before the making and execution thereof, and whether he continued to be ſo any time afterwards and how long, and by whoſe advice was the ſame made, and where, at what place, and about what time was ſuch will made and executed, and who drew or prepared ſuch will, and where did ſuch perſon who drew or prepared the ſaid will, and the perſons that were witneſſes thereto at the time of drawing or preparing

preparing the said *J. C.*'s will and execution thereof, respectively live or reside, and where do such persons now live, lodge, reside, or may be met with or heard of, and whether the said *J. C.* is not since dead, unmarried, and without issue, and whether the said *B. H.* your oratrix, *L.* and *S.* are not the only daughters and right heirs of the said *J. C.* and the only sisters and heirs at law of the said *J. C.* and whether upon the death of the said *J.* and how long after, or when otherwise, she the said *A.* did not enter upon the said premises, and take possession thereof, and receive the rents and profits thereof, and why, and whether she doth not now continue in the reception thereof, and what is the clear yearly produce thereof, and whether your orator in the right of his said wife, is not now become intitled to one full fourth or quarter part of the said premises, and to a full fourth or quarter part of the rents and profits thereof from the death of the said *J. C.* or how otherwise, and whether previous to your orator's said intermarriage with his said wife, and how long a partnership in trade was not entred into and carried on by and between the said *A.* and your orator's said wife, and during the said partnership the said sum of 1000 *l.* was not borrowed of the said other defendant *Mrs. M. C.* on the said partnership account, or how otherwise, and by whom and why, and whether upon the said marriage being concluded between your orator and his wife, it was not agreed that the said *A.* should retain the said whole partnership effects to her own use, and that in consideration thereof she should take the payment of the said sum of 1000 *l.* on herself, and alone become responsible to the said *M. C.* for the same, and whether in consequence thereof, an instrument or writing was not executed by and between them for discharging the said partnership, and

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for the said *A.*'s indemnifying your orator from the said sum of 1000*l.* or to what other purport and effect, and of what date, and in whose custody or power the same now is, or late was, and when and how long it was since she last saw the same, and whether she doth not conceal and secrete the same, and why, and whether at the time of the said discharge or dissolution of the said partnership as aforesaid the said partners were not possessed of a very considerable stock in trade, and of what the same particularly consisted, and whether divers debts were not standing out and owing from several persons to the said partnership, and whether she hath not received, or caused to be received, all or the greatest part thereof, and to what value the said partnership effects in the whole amounted unto; and that the said *M. C.* may set forth and discover when and by whom the said sum of 1000*l.* was borrowed of her, and whether the same was not the sole and proper debt of the said *A.* although your orator became a joint security with her for the same; and whether, if the same was borrowed on the said partnership account, she hath not since acknowledged, and to whom, that she knew of the said instrument or writings's being executed by and between the said *A.* and your orator, and that for the consideration herein before mentioned the said *A.* had taken the same upon herself, and that she knew the said *A.*'s circumstances to be very good, and should rely singly upon her for the payment of the said debt, or to that or the like effect; and whether she hath not since threatened to sue your orator for the same, and to compel him to make payment thereof, and why and whether she hath any mortgage, or other and what incumbrance on the said premises at — aforesaid, and by whom the same was made or done, and when and for what sum or sums of money really and

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bona fide advanced and lent by her, and to whom; and that the said *A.* may produce the said settlement, or set forth the same *in hæc verba* in her answer hereunto, and that the said will of the said *J. C.* may be declared to be null and void, and absolutely set aside as against your orator and oratrix, and your orator be put into the possession of one full fourth or quarter part of the said premises in right of his said wife, and that the said *A.* may account with your orator and oratrix, and pay them one full fourth or quarter part of the rents and profits of the said premises so received by her as aforesaid, and may likewise produce and deliver up to your orator the said instrument and writing so entered into between them as aforesaid, and further indemnify and save harmless your orator from the said debt of 1000 *l.* so owing to the said *S. W.* as aforesaid, or may otherwise account with your orator for a moiety of the said partnership effects, and pay and deliver over the same to your orator, and that the said mortgage or other incumbrance so made or done by the said *A.* to the said *S. W.* may be declared to affect the interest only of the said *A.* in the said premises, and that the said *S. W.* may be restrained from proceeding at law against your orator for recovery of her said debt by injunction of this honourable court, and that your orator and oratrix may be further and otherwise relieved in the said premises according to equity and good conscience, and as the nature and circumstances of their case shall require. May it please your lordship, &c.

J. C O X.

To the Right Honourable
Henry Lord Apsley, &c.

A bill of interpleader.

Humbly complaining, sheweth unto your Lordship, your orator *A. B.* of &c. that *C. D.* late of the city of *London*, being possessed of a messuage or tenement with the appurtenances, situate, lying, and being at *H.* within the manor of *S.* in the county of *M.* called the New Inn, and also of two closes of arable land called *W.* situate, lying, and being within the said manor for the remainder of one or more long term or terms of years, determinable on the lives of him the said *C. D.* *J. D.* his son, and *A. K.* widow, his daughter, and the survivor and survivors of them, which said messuage or tenement, lands and premises, had been granted, and which he so held by and under two several leases thereof respectively made and executed to him by *A. T.* of &c. Esq; then lord of the said manor, at and under the yearly rents and covenants therein respectively contained, he the said *C. D.* did sometime in the year 1745, duly make and publish his last will and testament in writing, and thereby give and devise all the said premises to the said *J. D.* his son, for so long of the said terms as he should live, and after his death he gave the same to *E.* the wife of the said *J. D.* for so long of the said terms as she should live, and after her death willed and devised, that the executors of the said *J. D.* should hold and enjoy the said premises for all the rest, residue, and remainder of the said two terms then to come and unexpired, and of his said will made the said *J. D.* executor; and soon after the making his said will, he the said *C. D.* departed this life; whereupon the said *J. D.* entered upon the said premises, and held and enjoyed the same under the said will; and he the said

said *J. D.* did, soon after his said father's death, prove the said will in the ecclesiastical court of the Archbishop of *Canterbury*, as in and by the said will, or the probate thereof under the seal of the said court, relation being thereunto had, will appear. And your orator further sheweth unto your Lordship, that the said *J. D.* being possessed of the said premises, as devisee under the said will, as aforesaid, or as executor of the said will, he and the said *E.* his wife, did sometime in or about the year of our Lord 1752, make some mortgage of the said messuage or tenement called the New Inn to *J. M.* late of, &c. Esq; since deceased, for securing the repayment of the principal sum of 1000 *l.* with interest for the same; and at or about the same time, or shortly afterwards, they the said *J. D.* and *E.* his wife, did make some mortgage of the said two closes called *W.* to *J. G.* of the said city of *L.* grocer, for securing the repayment of the principal sum of nine hundred pounds, with interest for the same, as in and by the said mortgage deeds, had your orator the same to produce, relation being thereunto respectively had, would more fully appear. And your orator further sheweth unto your Lordship, that afterwards the said principal and interest secured by the said mortgage to the said *J. G.* not being paid according to the proviso or condition for payment thereof in the said mortgage to him made contained, and the estate in law of and in the said two closes, being become absolute at law in him the said *J. G.* and there being 978 *l.* 7 *s.* 6 *d.* remaining due to him for principal and interest on the said mortgage, he the said *J. G.* did, by some indenture by him duly executed, for the considerations therein mentioned, assign the said two closes, and all his estate, right, title and interest therein to *R. B.* of *London* aforesaid,

H 3 Esq;

Esq; subject to redemption on payment of the principal sum of 978 *l.* 7 *s.* 6 *d.* with interest for the same, by the said *J. D.* at the time and in the manner in the said deed of assignment mentioned, as in and by the said deed of assignment, had your orator the same to produce, relation being thereunto had, would more fully appear. And the said *J. D.* at or about the same time delivered him the said *R. B.* the possession of the said two closes, and he hath ever since been in the receipt of the rents thereof; and your orator further sheweth unto your Lordship, that the said *J. M.* some time since departed this life, having in his life-time duly made and published his last will and testament in writing, and thereof nominated and appointed *E. M.* spinster, his only child, executrix, who hath since his death duly proved his said will in the proper ecclesiastical court, as in and by the probate thereof under the seal of the said court, relation being thereunto had, will appear; and your orator sheweth unto your Lordship, that the estate in law of the said *E. M.* of and in the said messuage or tenement called the New Inn being absolute in her as executrix as aforesaid, and there being a large sum of money due upon the said mortgage thereof for principal and interest, she the said *E. M.* did, by some indenture or deed of assignment, for the considerations therein mentioned, sometime in or about the month of *March* last, assign the said messuage or tenement with the appurtenances, and all her estate, right, title or interest therein to the said *R. B.* as in and by the said last mentioned deed or indenture of assignment, had your orator the same to produce, relation being thereunto had, would appear. And your orator further sheweth unto your Lordship, that the said *R. B.* being possessed of

and

and intituled to the said two closes of land, by virtue of and under the said assignment thereof, did sometime in or about the month of *October* last demise the same to your orator by parol or word of mouth only, for the term of three years from *Lady-day* now last past, at the yearly rent of 50 *l.* payable quarterly, which is the full yearly value thereof; and the said *E. M.* shortly before she assigned the said messuage or tenement to the said *R. B.* as aforesaid, had in like manner demised the same to your orator by parol or word of mouth only, for three years from *Lady-day* now last past, at the yearly rent of 50 *l.* payable quarterly, which is the full value thereof. And your orator sheweth unto your Lordship, that the said *J. D.* having got into the possession of all the premises, the said *R. B.* hath caused an action of trespass and ejectment to be brought in his Majesty's court of Common Bench for recovery of the possession thereof, and hath caused a declaration in ejectment to be delivered to and served upon your orator, but at the same time told your orator, that he would not disturb your orator in his possession as tenant thereof as aforesaid, and that he only intended to recover the same against the said *J. D.* and your orator having given notice of and delivered over the said declaration to the said *J. D.* he alledged to your orator, that he had paid off and satisfied the said *R. B.* all monies due on the said two mortgages, and told your orator he need not give himself any trouble about it, declaring that he the said *J. D.* would defend the said suit, and the possession of the said premises. And your orator sheweth unto your Lordship, that — being a year's rent, became due from your orator for the said premises; and they the said *R. B.* and *J. D.* have both of them demanded the

same of and from your orator, and do each of them insist to be paid the same; and your orator sheweth unto your Lordship, that your orator confiding in such the declarations of them the said *R. B.* and *J. D.* with respect to the said ejectment, did not make any defence thereto, but by collusion between them the said *R. B.* and *J. D.* the said *J. D.* having caused himself or your orator to be made tenant in the room of the casual ejector, the said cause was by the said *R. B.* carried down in order to be tried at the last assizes held in and for *C.* in the said county of *M.* and the jury being sworn, and the said *J. D.* or any on his or your orator's behalf, not appearing to confess lease, entry and *ouster*, the plaintiff in the said ejectment was nonsuited, and the *possession* being returned, judgment hath been thereupon given against the casual ejector, and the said *R. B.* threatens that he will cause a writ of possession to be sued out upon the said judgment, and will turn your orator out of possession of the said premises, and will cause an action to be brought against your orator for the mesne profits thereof; and they both threaten to distrain your orator's goods for the said rent, and otherwise to proceed against your orator at law for the same, so that your orator is not able to determine or judge to which of them the said rent of right belongs, or is payable, nor to which of them securely and with safety to pay the same; and they both declare and threaten they will turn your orator out of possession of the said premises, and not suffer your orator to hold or enjoy the same. *All which actings and doings of the said R. B. and J. D. (who combine and confederate together and with divers other persons at present unknown to your orator, whose names, when discovered, your orator*

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tor prays may be inserted herein, and they made parties, with apt words to charge them how to injure and oppress your orator in and touching the premises) are contrary to equity and good conscience, and tend to your orator's manifest wrong and oppression. **In tender consideration whereof**, and forasmuch as your orator is remediless in the premises by the rules of common law, and can only be relieved in a court of equity before your Lordship, where matters of this nature are properly cognizable, and where your orator may compel the said claimants to interplead, settle, and adjust their rights and demands between themselves, so that your orator may be enabled to pay the said rent with safety; and for that your orator's witnesses, who could prove the truth of the several matters aforesaid, are dead, or gone into parts beyond the seas, remote, and to your orator unknown; **Co the end therefore**, that the said *R. B.* and *J. D.* and the rest of the confederates (when discovered,) may upon their respective corporal oaths full, true, and perfect answer make (according to best of their knowledge, remembrance, information, and belief,) to all and singular the matters aforesaid, as fully and effectually to all intents and purposes, as if the same were here repeated, and they particularly and distinctly interrogated; and more especially that they may set forth and discover, whether the said *C. D.* was not in his life-time possessed of the said messuage or tenement, and two closes of land, for some and what term or terms of years determinable in manner as aforesaid, or how otherwise; and whether he did not in his life-time duly make and publish his last will and testament in writing, and thereby give and devise the premises, or any, and what part thereof, to such persons and in such manner as aforesaid, or how other-

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wife; and whether the said *J. D.* and *E.* his wife, or either and which of them, did not become possessed of or intitled under the said will, or how otherwise, to the said premises, or any and what part thereof; and whether the said *J. D.* and *E.* his wife, or the said *J. D.* alone, did not make some, and what mortgage of the said messuage or tenement called the New Inn, to the said *J. M.* and whether the estate at law of the said *J. M.* or of the said *E. M.* therein did not become absolute; and whether he the said *J. M.* is not dead, and where he died; and whether he did not in his lifetime make the said *E. M.* his only child executrix thereof; and whether she as executrix as aforesaid, did not become possessed of or intitled to the same; and whether she did not make such assignment thereof as aforesaid, or any other, and what assignment, and when, to the said *R. B.* or how otherwise he the said *R. B.* became possessed of or intitled to the same; and whether as they know, have heard, or do believe, the said *E. M.* before the making the said assignment, did not demise the said messuage or tenement to your orator by parol or word of mouth, or how otherwise, for such term of three years from *Lady Day* last, or for what other term, at such yearly rent as aforesaid, payable as aforesaid, or what other rent and how payable; and whether they the said *J. D.* and *E.* his wife, or the said *J. D.* alone, did not make some, and what mortgage of the said two closes to the said *J. G.* and whether the estate of the said *J. G.* therein did not become absolute at law; and whether the said *J. G.* did not afterwards, and when, make some and what assignment thereof to the said *R. B.* and whether he the said *R. B.* did not, and when, demise the said two closes to your orator by parol or by word of mouth, or how
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otherwise, for such term of three years from *Lady-Day* last, or for what other term, at such yearly rent as aforesaid, payable as aforesaid, or what other rent, and how payable; and whether the said *R. B.* hath not caused a declaration of ejectment to be delivered, and when, to your orator; and whether he did not make and give your orator such assurance concerning the same as aforesaid, or what else he said, intimated, or signified to your orator concerning the same; and whether he the said *J. D.* did not cause himself to be made defendant in the said action in the room of the casual ejector, and whether he did not undertake or promise to defend the same, and whether he any ways, and how, did defend the same, and whether the plaintiff in the said ejectment was not nonsuited at the said last — affizes on account of the said *J. D.*'s not appearing to confess lease, entry and ouster, and how otherwise; and whether thereupon judgment hath not been had, or is not intended to be had against the casual ejector; and whether he the said *R. B.* hath not threatened or declared, that he would cause a writ of possession to be sued out upon the said judgment, or doth not intend so to do; and whether they the said *R. B.* and *J. D.* have not threatened to turn your orator out of the possession of the said premises, or any and what part thereof; and whether there is not now due for rent of the said premises the sum of ——— or any other, and what sum; and whether they do not both demand the said rent, or threaten to distrain, or sue your orator for the same, or which of them so doth, and that they may set forth to which of them the said rent doth of right belong, or is payable, and may interplead, settle, and adjust their said demands between themselves; your orator being willing to pay the said rent

to either of them, to whom the same shall appear of right to belong, being indemnified; and that your orator may be at liberty to bring the same into this honourable court, which your orator doth hereby offer to do for the benefit of such of the said two parties who shall appear to be intitled thereto; and that they the said *R. B.* and *J. D.* and each of them, may be restrained by the injunction of this honourable court from proceeding at law against your orator for the said rent, and also from proceeding in the said ejectment, or any other ejectment for recovery of the said premises or any part thereof, during the remainder of the said three years, for which the said premises were severally demised to your orator as aforesaid; and that your orator may be quieted in the possession of all and singular the said premises during such the remainder of the said term of three years; and that your orator may have and receive such further and other relief in and touching all and singular the matters and things aforesaid, as to your Lordship shall seem meet and agreeable to equity and good conscience. May it please your Lordship, &c.

E. UMFREVILLE.

N. B. This bill is grounded on an affidavit, (which must be annexed thereto) that the complainant does not exhibit such bill by way of collusion, with all or either of the defendants, or any other person, but only to protect and indemnify himself: the form of this affidavit is stated in page 43.

To the Right Honourable
Henry Lord Apsley, &c.

Humbly complaining, sheweth, &c. Your Certiorari orator *A. B.* &c. that whereas, &c. (*setting forth a cause prosecuted in the Lord Mayor's court*) All which said premises your orator hopes he shall make fully appear by several witnesses if need be, which he could not produce within the said city of *London* before the said Lord Mayor and his brethren the Aldermen of the city of *London*: Your orator shewing unto your Lordship, that one *E. F.* a material witness for your said orator concerning the said premises at the time of the cause, &c. then lived and resided, and still liveth and resideth at *Westminster*, without the jurisdiction of the said Lord Mayor and his brethren the Aldermen of the city of *London*, whereby your orator had no remedy to compel the said *E. F.* to be examined, or to give his testimony in the said cause in the city of *London* concerning the premises; *in tender consideration whereof*, and forasmuch as for want of jurisdiction in the said Lord Mayor and his brethren the Aldermen of the said city of *London* over your orator's witnesses, your orator is remediless there; and it being agreeable with the rules and practice of this honourable court, upon such necessities and defects of jurisdiction in inferior courts, for this high and honourable court, to remove the records and proceedings thereof into this honourable court, and to proceed in this court upon the same, and all other matters and things incident thereto, or whereupon your orator seeks relief. May it please your Lordship therefore, not only to grant unto your orator a writ of *Certiorari* to be directed to the said Lord

Lord Mayor of the city of *London*, and his brethren the Aldermen of the said city, thereby commanding them upon the receipt of the said writ to certify and remove the records of the said cause, &c. and all proceedings thereupon into this honourable court: But also to grant unto your orator his Majesty's most gracious writ of *subpœna* to be directed to the said *C. D.* &c. thereby commanding them and every of them at a certain day and under a certain pain therein to be limited, personally to be and appear before your Lordship in the high and honourable court of *Chancery*, then and there upon their corporal oaths fully and directly to answer all and singular the premises, and to set forth and discover whether, &c. and whether it was not declared and agreed, &c. and whether the said *C. D.* &c. be not indebted unto your said orator and in what sum, and that your said orator may be righted and relieved in all and singular the premises according to equity and good conscience: And that the said defendants may stand to, observe and perform such order and decree therein, as your Lordship in your great wisdom shall think just and meet.

A R. J O N E S.

To the Right Honourable
Henry Lord Apsley, &c.

Humbly complaining, sheweth unto your Bill brought Lordship, your orator *A. B.* of, &c. as well by a creditor on behalf of himself as other the creditors of *C. D.* late of, &c. deceased, who shall come in and contribute to the expence of this suit, that the said *C. D.* being in his life-time, and at the time of his death, seised in fee of a considerable real estate, of which he had power to dispose, and also possessed of a considerable personal estate; and being so seised and possessed, he the said *C. D.* did duly make and publish his last will and testament in writing, bearing date on or about the 10th day of May which was in the year of our Lord 1768, in the presence of three credible witnesses, who also subscribed their names as witnesses thereto in the said testator's presence; and the said testator did therein and thereby give and devise to his sister *E. D.* and to his brother *J. D.* and their heirs, all and every his messuages, lands, tenements, and hereditaments whatsoever; **In trust** to sell and dispose of the same, and by the monies arising by such sale to pay all his just debts; and the overplus (if any) and also all his goods, chattels, rights, credits, and personal estate, he gave to the said *J. D.* and *E. D.* equally to be divided between them, and made them joint executors of his said will. And your orator further sheweth, that the said testator, soon after making of his said will, departed this life (*to wit*) on or about the 5th day of August, which was in the year of our Lord 1770, without altering or revoking the same, and the said executors, or one of them, duly proved the same, and under-

dertook the burthen of the execution thereof, as by the said will and probate, relation being thereunto had, may more fully and at large appear: and your orator further sheweth unto your Lordship, that the said *C. D.* was indebted to your orator in the sum of 100 *l.* by a note of his hand bearing date on or about the 6th day *June*, 1760, whereby the said testator promised to pay your orator or his order the said sum of 100 *l.* with lawfull interest for the same, upon demand, for value received, as by the said promissory note under the hand of the said *C. D.* now in your orator's custody, ready to be produced, and to which your orator craves leave to refer, may appear: And the said testator was also indebted to several other persons in divers considerable sums of money: And your orator sheweth unto your Lordship, that upon the death of the said *J. D.* the said *E. D.* and *C. D.* by virtue of or under colour of the said will, entered into the receipts of the rents and profits of all the said real estate of the said *C. D.* and also possessed themselves of all the goods, chattels, rights, credits and personal estate of the said testator to a very considerable value, and much more than will be sufficient to pay and discharge all the just debts of the said testator; and your orator hath several times applied himself to the said *E. D.* and *J. D.* for a satisfaction of his said demand; But the said *E. D.* and *J. D.* combining and confederating to and with *W. W.* and *Ann* his wife (which said *Ann* is only daughter and heir at law of the said testator) and to and with divers other persons at present unknown to your orator, whose names when discovered your orator prays may be inserted herein, and they made parties hereto, with apt words to charge them, how to wrong and injure your orator; they sometimes give
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out and pretend, that they have several claims upon the said estates, by means whereof your orator is delayed and prevented from receiving his debt or any part thereof; and at other times the said executors admit the testator's personal estate will be sufficient to pay all his just debts, but insist that they have not been able to collect or get in the same, and therefore cannot give your orator any account thereof, or make him any satisfaction for his said debt; and the said executors pretend that the said testator's personal estate is very small and inconsiderable, and is not near sufficient to pay his just debts; and the said *W. W.* and *A.* his wife do insist that the said testator's personal estate is more than sufficient to pay all his just debts, and therefore they insist that the said real estate ought not to be sold, and refuse to join in the sale of the said estate, pretending that the said will was not duly executed, and that therefore the same descended to the said *A. D.* as heir at law to the said testator. **All which doings and doings** of the said confederates are contrary to equity and good conscience, and tend to the great wrong and injury of your orator who is only properly relievable in this honourable court. **To the end** therefore, that the said *E. D. J. D. W. W.* and *A.* his wife may true and perfect answer make to all and singular the matters and things as fully and particularly as if the same were here again repeated and they severally interrogated thereto, and particularly that they may set forth whether the said *C. D.* was not in his life-time, and at the time of his death, seised in fee or otherwise, of and in some good estate of inheritance of a considerable value, or what real estate, and whereof he had a full power to dispose, and whether he the said testator did not make and duly execute such will, and of such date as herein before set forth,

forth, or any other and what will, and whether he was not of sound and disposing mind, memory, and understanding, at the time of making and publishing his said last will, and whether the witnesses to the said will did not duly attest and subscribe their names as witnesses thereto in the presence of the said testator, and when he died; and that the said confederates may set forth, whether the said testator was not, in his lifetime, and at the time of his death, indebted to your orator in the manner herein before set forth, or in any other and what manner, as they know, have heard, or believe; and that the said executors may set forth, whether they, or either and which of them, have or hath, since the death of the said testator, proved the said will, and got into possession of all or any of the personal estate of the said testator, and also entered upon the receipt of the rents and profits of the real estate, and may either admit assets sufficient to pay the demands of your orator, or otherwise may set forth a true and particular account of the said testator's personal estate, and what the same did or doth consist of, with the true and real value thereof, and of every part thereof, and what part thereof hath come to the hands, custody, or power of them the said confederates, or to the hands, custody, or power of any other person or persons, and whom, by them, or by or with their or either of their order or privity, and for their or either of their use; and may set forth how and in what manner they have paid, applied, or disposed of the same, and of every part thereof; and that the said confederates may likewise set forth a full, true, and particular account of the said real estate so devised to be sold by the said testator's will as aforesaid, and where the same lies, together with the names of the several persons in whose tenure the same now is, or hath been ever since the death
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of the said testator, together with the true and real annual rents, values, and produce thereof; and may set forth an account of the several sums of money which they or any other person or persons, and who for their or either of their use, have or hath received out of, or by the rents and profits of the said real estates since the death of the said testator; and that the said confederates may set forth what right, title, interest, property, claim, or demand they or any, and which of them respectively have, or pretend to have or claim to the said real or personal estates of the said testator; and that in case the said personal estate of the said testator shall not be sufficient to pay and satisfy your orator's said demands, that then the said real estate may be sold, or so much thereof as shall be necessary, and that out of the money arising by such sale, your orator and others the creditors of the said testator, who shall come in and contribute to the expences of this suit, may be paid their said debts with interest and costs, and that all proper parties may join in the sale of the said real estate in such manner as this honourable court shall direct, *and that the several witnesses to the said will may be examined as to the execution of thereof, and their testimony perpetuated*; and that your orator may have such further and other relief in all and singular the premises aforesaid, as the nature and circumstances of his case shall require, and as to your Lordship shall seem most meet; may it please your Lordship, &c.

J. MADDOCKS.

To the Right Honourable
Henry Lord Apſley, &c.

A bill of re-
vivor.

Humbly complaining, ſheweth, &c. your orator *A. B.* of, &c. That whereas your orator on or about, &c. did exhibit his bill of complaint into this high and honourable court, againſt *C. D.* of, &c. thereby ſetting forth, that the ſaid *C. D.* &c. (*reciting the original bill,*) and that your ſaid orator might be relieved in the premiſes, he prayed the aid and aſſiſtance of this honourable court; and that for that purpoſe proceſs of *ſubpoœna* might be awarded againſt the ſaid *C. D.* to appear in this court, and answer the ſaid bill; which proceſs being granted, and the defendant therewith ſerved, he appeared accordingly, and answered the ſaid bill; to which answer your orator replied, and the defendant rejoined, and both parties joined in ſuing out a commiſſion, and a joint commiſſion iſſued for the examination of witneſſes, by virtue whereof divers witneſſes were examined on both ſides, and their depositions duly taken, returned and publiſhed according to the uſual rules and practices of the court, as by the ſaid bill, answer, replication, &c. now remaining in this court may appear; and the cauſe ſo ſtanding in this court upon the ſaid proceedings as aforeſaid, the 8th day of *May* now laſt paſt, was by the order of this honourable court, appointed for the hearing hereof: But now ſo it is, may it pleaſe your Lordſhip, that before any further proceedings were had in the cauſe, the ſaid *C. D.* defendant in the cauſe died, whereby the ſaid ſuit and proceedings thereupon became abated; and the ſaid *C. D.* having in his life-time made his will, and one *G. D.* of, &c. executor thereof,

of, who since the said C. D.'s death, hath proved the said will, and taken upon himself the burthen of the execution thereof, and possessed himself of the said C. D.'s personal estate, sufficient to satisfy your orator's demands, &c. And forasmuch as by the death of the said C. D. the said suit is become abated as aforesaid: *And to the end*, the same suit and all orders and proceedings therein may stand and be revived against the said G. D. and be put into the same state and condition as the same were in at the time they so became abated, May it please your Lordship, the premises considered, to grant unto your orator his Majesty's most gracious writ of *subpœna* to revive, issuing out of this honourable court, to be directed to the said G. D. therein and thereby requiring him personally to be and appear before your Lordship in this honourable court, then and there to shew cause, if he can, why the said suit, orders, and proceedings so abated as aforesaid, should not stand and be revived and put into the same condition as the same were in at the time of the abatement thereof, and answer all and singular the premises aforesaid; and also stand to and abide such further order and decree therein as to your Lordship shall seem meet, &c.

C. Y O R K E.

*To the Right Honourable
Henry Lord Apsley, &c.*

Humbly complaining, sheweth unto your Lordship your orators A. B. of, &c. and C. D. of, &c. that, &c. (*setting forth the former bill as in the decretal order;*) and thereupon the defendants answered, and the plaintiff replied, and witnesses were examined, and their depositions

Bill of review.

tions published, &c. that the cause came on to hearing, and was heard and decreed by the Lord Chancellor C. after which, &c. petitioned for a rehearing to the Lord Chancellor, &c. And the cause was accordingly reheard, and a decree for reversal was made by his Lordship; (*prout* the decree, and that decree is signed and inrolled in this court; but your orators do aver and say, that they are aggrieved by the said last decree, and that they ought not to be bound thereby, nor should any such decree have been made or pronounced against your orators; neither ought your orators to pay, &c. as by the said decree is appointed; and that the same decree is erroneous, and ought to be reversed; and for error do, according to the course of this honourable court, assign the errors therein as followeth: First, Your orators say, and hope to maintain, that, &c. which is altogether uncertain, &c. Secondly, That, &c. which appears by, &c. to be fraudulent and corrupt. Thirdly, That, &c. was not alive at the time of the said decree made in the said cause against your orators, and so could not be bound by the said decree; and consequently your orators ought not to be bound thereby; for all which said errors and imperfections in the said decree your orators have brought this their said bill of review; and humbly conceive they should be relieved therein: *In tender consideration whereof*, and for that there are divers other errors and imperfections in the said decree and proceedings, by reason whereof the same ought to be reviewed and reversed; and that the first decree made by, &c. ought to stand and be confirmed. &c. *To the end therefore*, that the said last decree, and all the proceedings thereupon, may be reviewed and reversed, added, &c. and that the said, &c. may answer the premises; and that your orators may be relieved in all and singular

gular the premises according to equity and good conscience, &c. May it please your Lordship to grant your orators his Majesty's writ of *subpœna* to revive and answer, directed to, &c. commanding them, &c.

STE. COMYNS.

DIRECTIONS FOR FILING THE BILL, &c.

The bill being drawn and settled by council according to the foregoing directions, must be ingrossed on a 2 s. skin of parchment, in a fair strong hand, and the council's name who signs the draught of the bill must be wrote to the ingrossed bill on the right hand corner thereof, when it must be delivered to the clerk in court you intend to manage the business, who files the same in the fix clerk's office, in whose department he is, and gives notice thereof to the clerk or clerks in court of the defendant, as the case may be, that he may bespeak a copy thereof, for the purpose of answering the same; this part of the business is entirely managed by the clerk in court, and not by the solicitor, who charges for the same as set forth in the clerk in court's bill of costs.

The practiser must observe on his filing his bill, that if any of the defendants are peers of the realm, or members of parliament, that the following steps must be taken against them to compel them to answer his bill.

If a peer of the realm, he is not served with a *subpœna* in the first instance as another defendant; you must apply by petition, as directed under the head of petitions, to the Lord Chancellor, for his Lordship's letter *missive*, directed to such peer. It being a matter of course,
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the Chancellor directs the letter missive to issue, and his secretary makes out the same, which is signed by his Lordship, for which you pay the secretary. When you have procured such letter, you deliver the same to the defendant, and at the same time give him an office copy of the bill, signed by the fix clerk or his deputy, in whose office the business is transacted; and if he does not appear by the time directed by such letter, you may have a *subpœna* against him, and proceed thereon as against a common person.

If the defendant should happen to be a member of parliament, at the same time you serve him with a *subpœna* to answer your bill, you must deliver to him an office copy of such bill, properly authenticated, and if afterwards he does not appear, you proceed as against a common person.

If it should be necessary to make the Chancellor a party to a suit, the bill must be directed to his Majesty, *viz To the King's most excellent Majesty, &c.* and in the prayer of such bill the word *Majesty* must be used instead of Lordship.

CASES OF PRACTICE.

Who are necessary parties as plaintiffs and defendants.

Usually all interested in the suit are to be made parties, or the defendant may demur to such bill; or if he does not demur, the court will not proceed to a decree, if a decree is made, the same may be reversed, and if not reversed, none are bound by such decree, but such as were parties, or those claiming under them.

On a bill brought by a mortgagee against the heir of the mortgagor to *foreclose*, the executor of such mortgagor need not

be made a party to the same. 3 *Wil. Rep.* 333.

On a bill for an account of the personal estate of a person who died intestate, the person who has a right to administer must be made a party, provided he has obtained letters of administration; but it has been allowed where a party was entitled to administration, though they had not taken out the same.

3 *Wil. Rep.* 349. *Proceedings in Chan.* 63.

Strictly none are defendants to a bill, but those against whom process is particularly prayed. 1 *Wil. Rep.* 593. *W. P. Wms. vol. 1. page* 593.

The court will not take cognizance of a suit by bill, for any matter under 10*l.* value, except the same is for a charity. *Moseley* 47. *pl.* 31.

If such bill is filed, the defendant may either demur thereto, or move to have the same dismissed, as being below the dignity of the court. *Moseley* 356.

In a suit for arrears of rent on behalf of a charity, the plaintiff need not make all the tenants parties to his bill. 1 *Salk.* 63. *W. P. Wms. vol. 1. page* 599.

On a bill filed touching a vestry order, all the parties to such order must be made defendants to the suit. *Hard.* 333.

If a bill wants proper parties the court can dismiss the bill without prejudice, or give leave to the plaintiff to amend, paying costs. *W. P. Wms. vol. 1. page* 420.

A trustee on behalf of three, cannot be called to an account by one of the parties interested, without those who have a joint interest with him being made joint parties to the bill. 1 *Vern.* 110.

Executors must sue and be sued. 3 *Chan. Rep.* 207. So must trustees, co-obligors, &c. *Nelson's* 334.

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If a bill is brought against the trustee of an outlaw for any annuity due out of the outlaw's estate, the Attorney General must be made a party. *W. P. Wms. vol. 1. page 445.*

If judgment is obtained at law against one obligor, you may file a bill against his executor for a discovery of assets, on this principle, that the bond is drowned in such judgment. *2 Chan. 2. Case 9.*

None should be parties to a suit, but such as will be bound by the decree of the court, for if it appears by the defendant's answer, that what he knows of the matter is mere evidence only, the plaintiff must pay his costs, and the plaintiff by this step deprives himself of their evidence, for it is the established rule of the court, that the answer of one defendant cannot be read against another. *3 Wil. Rep. 311.*

On a bill brought for relief in any matter or thing, all parties necessary to accomplish that purpose must be made parties to the suit. *Equity Cases 28, 170.*

If one defendant to a suit stands out process of contempt to a *sequestration*, yet the cause may be carried on to a hearing and decree without such defendant; but an order must be procured, that the plaintiff's clerk in court may attend with the record of the bill, when the court will decree the bill to be taken *pro confesso*, as against such *sequestered* defendant.

If two obligors are bound jointly and severally, and one dies; the executors of the deceased obligor may be sued in equity for the debt, without making the surviving obligor a party. *Vide W. P. Wms. vol. 2. page 313.*

It is a general rule of the court from which they never deviate, but on cases particularly circumstanced, and where justice would be withheld, that no one need be made a party

to a suit, against whom, if brought to a hearing, the plaintiff can have no decree. *W. P. Wms. vol 3. 311.*

An objection may be made to a bill for want of the necessary parties to shew the true state of the matter to the court. *Saville v. Tankred. Vesey vol. 1. page 101.*

When a creditor may make others beside the personal representative of the testator parties to a suit. *Ibid. page 705.*

On a bill brought by creditors to be paid debts out of a testator's estate, none need be made parties to the suit but the executors of his will who represents the testator, and are trustees for the legal distribution of his effects. *Ibid. page 131.*

A bill brought by a bond creditor against a devisee on the statute of fraudulent devises, the heir must be made a party. *W. P. Wm. vol. 1. page 100.*

It lies to perpetuate the testimony of a witness before trial on affidavit to support the same. *W. P. Wm. vol. 1. page 117.*

Original bill in what case it will or will not lie.

If *A.* brings his original bill against *D.* and *C.* and they put in insufficient answers, and bring a cross bill against *A.* and *D.* becomes a bankrupt, and his assignees bring a bill in nature of a bill of revivor against *A.* the court will not let them proceed till *C.* has answered *A.*'s bill. *Ibid. page 266.*

A bill will not lie for the owner of a quit-rent, in order to settle what proportion such quit-rent shall pay to the land tax. *Ibid. page 329.*

A bill lies in this court to recover back money paid on a bubble. *Ibid. page 154.*

The original bill must be first answered, but if the plaintiff after a cross bill filed, amends his bill, he by such amendment loses his priority. *Ibid. page 435.*

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A bill will not lie for a tenant to be relieved out of arrears of rent, for the taxes which he has paid on account of rent reserved to a charity, that appeared exempt from taxes. *Ibid.* page 128.

It will not lie where one has an annual payment secured on lands, which was held liable to pay taxes in proportion to the land on which it was charged, to make such annuitant refund in respect of payments she had received tax free, from the neglect of the party to deduct the same, on paying the said annuity. *Ibid.*

A single copyholder is not relievable in this court for an excessive fine, (that being determinable by a jury at law) but several copyholders may bring a bill to be relieved in this court, against a general fine that is excessive. *Ibid.* 157.

A bill may be brought to compel a specific performance of an award to convey an estate, where the party submitting has received the money, being the consideration for such conveyance. *Ibid.* 187.

A bill may be brought to compel a husband, who with his wife for a valuable consideration, covenants that his wife shall join with him in levying a fine to enforce the performance of such covenant. *Ibid.* 189.

Where relief is prayed in this court out of the common course, the plaintiff must shew that he has no remedy at law. *Ibid.* page 257.

A bill will lie to secure the benefit of a contingent interest devised over. *Ibid.* page 303.

In matters of title dependant on the words of a will, the parties interested may be relieved in this court, as well as at law. *Ibid.* page 296.

A bill may be brought to compel the delivery of any curiosity in specie. *Ibid.* p. 390.
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Any person as *prochein amy* may exhibit a bill in this court in the name of an infant. *Precedents in Chan.* 376.

On a bill brought to set aside a decree against an infant for fraud, if the same be not apparently fraudulent, though in every respect not so equitable, the court will not set it aside. *W. P. W. vol. 1. p. 734.*

An infant aggrieved by a decree, is not compelled to stay till he comes of age, but may when he thinks proper, bring an original bill, and alledge specially the errors in such decree. *Ibid.* 737.

An infant cannot file a bill for an account against his guardian during his minority, but a third person on his behalf may. *Ibid. vol. 2. p. 119.*

A feme infant seised of lands, &c. in fee, on marriage with the consent of her guardians, covenants in consideration of a settlement, to convey her inheritance to her husband, if done in consideration of a competent settlement, this court will compel the execution of the agreement, though no action would lie at law to recover damages. *Ibid. p. 244.*

If an infant by his *prochein amy* files his bill in this court, and never stirs in it after he comes of age, so that the bill is dismissed, he is liable to pay costs, and must take his remedy over against his *prochein amy*. *Ibid. p. 297.*

If an infant in his bill by mistake of his guardian submits to any thing to his prejudice, this will not bind him, but the court will permit him to amend such bill. *Ibid.* 387.

An infant, when plaintiff in a suit in this court, has no privilege. *Ibid. p. 519.*

When one has been in possession of land belonging to an infant, and the infant when of age makes out his title to such estate, he shall in this court recover the profits from the time

his title first arose, and not from the filing the bill only. *Ibid.* p. 645.

If an executor, administrator, or trustee for an infant, neglects to sue within six years, the statutes of limitation will bind the infant. *Ibid.* vol. 3. p. 309.

An infant pays no costs in this court on a bill filed by his *prochein amy*. *Vide Stra.* p. 708.

An infant's inheritance is not bound by the act of the court. *Vesey* vol. 1. p. 23.

Infants may be bound by an act of the court if constant of their right. *Ibid.* p. 212.

This court may give extra-judicial direction touching an infant, or on a stranger's application, and undertaking to pay costs. *Ibid.* 484.

Ideots, after they are found so, are to sue by the King's Attorney General; *Lunaticks*, by their *Committees*: if a lunatic be not made a party in a bill or information, it is a good cause of demurrer to such bill. 1 *Chan. ca.* p. 153.

If the bill is brought to be relieved against some act done during his lunacy, he must not be named in such bill. 1 *Chan. ca.* p. 113.

Where this court allowed the profits of a lunatic's estate to his committee for his maintenance, and on his death, his administrator brought a bill for an account of the profits of his estate, the court declared they would not relieve against the committee, unless a gross fraud was proved in the conduct of such committee. *W. P. W.* vol. 3. p. 104.

A bill may be brought in this court for a specific performance of an agreement decreed against one, since become a lunatic. *Vesey*, vol. 1. p. 82.

Where a bill is brought by a *prochein amy*, not able to pay costs, this court will order another to be named who can, or order him to give security to pay costs. *Mosely*, p. 47.

A *prochein amy* is allowed costs on dismissing an infant's bill. *Vesey*, 2. p. 466.

Outlawry or excommunication in a guardian or *prochein amy* cannot be offered in disability where he sues for an infant, because he acts in *autre droit*.

A trustee may in some cases sue in his own name, but usually the *cestuy que trust* must be made a party to the suit.

On a bill brought to execute a trust, the first person entitled to the inheritance is a necessary party, if in being. *Vesey*, vol. 2. p. 492.

The husband and wife must join in all suits Feme co. for things merely in action belonging to his verts. wife. *Anon.*

If she sues for performance of her marriage settlement, it must be by *prochein amy* or next friend. *Anon.*

A *feme covert*, who has a separate maintenance, may sue alone. 1 *Chan. ca.* p. 35.

A bill for a wife's separate estate is to be brought by her *prochein amy*; but when joined with her husband, payment is ordered to a trustee for her. *Vesey*, vol. 2. p. 452.

So she may where her husband is banished by statute. 2 *Vern* p. 104.

Where an heir at law is plaintiff in a suit, and he miscarries, if the same appears to the court groundless, they will decree costs against him. 3 *Will. Rep.* p. 373.

Executors and administrators may not charge or be charged in this court further than they are liable by the rules of law, but they may sue each other here. *Totb* p. 74.

A person may be allowed to bring a bill as administrator before administration is actually taken out. *Barnard. Rep.* p. 320.

Injunction
bill.

If a suit goes against a *pauper*, either plaintiff or defendant, he is not to pay costs but to be punished at the discretion of the court.

According to the usual customary practice of this court, an injunction is never granted before the bill is filed. In particular cases it may, which must be shewn to the court, to induce them so to do. *2 Vern. 401.*

To obtain an injunction, the parties right and injury must be shewn to the court. *Ibid. 276.*

If an injunction bill is taken *pro confesso*, through defendant's contempt, the court will decree the same to be perpetual. *Anon.*

If an injunction is prayed against a verdict at law, the debt and damages found must be deposited, before the same can be obtained. *Chan. cases, 447.*

This court by injunction will stay a lessee from doing waste. *Ibid. 450.*

It is to be obtained only against those who hold mediately or immediately under him that prays such writ. *Ibid.*

On prosecutions for perjury, the court will grant an injunction till the cause is heard. *Anon.*

If a man prays an injunction to stay proceedings at law, on a bond, it will be refused, except he will give judgment, and be bound by an order of the court to bring no writ of error on such judgment. *Anon.*

In general an injunction is never granted before the bill is filed, unless in some particular cases, which must be shewn sealed to the court,

On a trust estate, devised to be sold, or devised to a particular person, if the will be disputed after two trials at law, in favour of such will, this court will grant a perpetual injunction. *2 Vern 401. W. P. Wms. vol. 1. p. 671.*

The same doctrine is held in ejectment after several trials and verdicts given in favour of the will, the party on filing his *bill of peace* the

the court will grant a perpetual injunction. *Ibid.* page 672.

On a bill brought to set aside a will of a bequest of personal matters, under a pretence of fraud in the said will, this court will refuse to grant an injunction. *Ibid.* vol. 2. page 287.

This court will grant a perpetual injunction after two verdicts on trials at bar in favour of the plaintiff's lessee in ejectment, in order to quiet the right. *Stra.* vol. 1 page 404.

This court will grant an injunction to stay waste. *Vesey*, vol. 2. page 476.—or where the party's right applying to the court for such injunction appears apparent on record. *Ibid.*

This court may interpose instantly, by order or injunction, to prevent any matter, for which damages will lie at common law, as against stopping up lights, &c. *Ibid.* page 543.

In the usual course of practice, after answer comes in, the defendant moves to dissolve the injunction on the merits, which is generally granted, if the defendant has fully answered the equity of the plaintiff's bill, otherwise not; in some particular cases the court will continue the injunction. *Vesey* vol. 2. page 19.

According to the common practice of this court, no injunction can be obtained on an amended, supplemental, or original bill, between the same parties, where the first bill to stay proceeding at law, was dissolved on the merits. *Ibid.* page 20.

If an injunction is irregularly obtained, defendant, by applying for time to answer, does not wave his redress for such irregularity. *Ibid.*

A perpetual injunction may be obtained on a decree for the performance of trusts. *Ibid.* page 9c.

After the defendant has appeared, no special injunction can be obtained without notice. *Ibid.* page 112.

To obtain an injunction to stay building, it must be alledged that such building will stop ancient lights held by prescription or agreement. *Ibid.* page 452.

Plaintiffs alledging to the court on defendant's answer coming in, that the same is insufficient in order to prevent injunction being dissolved, is not a sufficient ground to induce the court to continue injunction. *Ibid.* p. 453.

In case of waste, on a certificate and affidavit, the court will grant an injunction before defendant puts in his answer, so they will for a plain and apparent nuisance on certificate, affidavit, and notice to the party; but on a particular nuisance the party must shew his right, and how he is particularly aggrieved, before the court will grant an injunction. *Ibid.* page 454.

If a man prays an injunction to stay proceedings at law on a bond, it will be refused, except he will give judgment, and be bound by order of the court to bring no writ of error on such judgment. 1 *Vern.* 120.

If a member of parliament brings an action at law, the defendant at law may bring a bill in equity for an injunction to stay such suit, without being guilty of a breach of privilege. *Vern.* 329.

When the plaintiff must pay costs for amending his bill, and when not.

Where the defendant has examined witnesses, the court will not permit the plaintiff to amend his bill by adding other parties thereto. *Barnard. Rep.* 223.

The plaintiff may amend his bill before or after appearance and answer, and he may add new parties to the bill even after publication passed, if the plaintiff has made any mistake in drawing, settling, or ingrossing his bill, which requires amendment, he may, before the defendant's

dant's answer comes in, by motion or petition, procure an order either to amend, or dismiss the bill. In case the defendant has appeared and taken an office copy of the bill, he cannot dismiss the bill without paying costs to be taxed, but he may amend his bill without paying costs, which amendment is made on the defendant's office copy of the bill; this liberty is obtained by petition and order of course.

If the plaintiff finds it necessary to amend his bill after the defendant has put in his answer and such amendments, from the equity of the plaintiff's case require to be answered; in that case, he must pay the defendant 20 s. costs, which costs must be paid before he can further proceed in his suit.

When this is the case, the plaintiff must file an amended bill, the defendant must be served with a *subpœna de novo*, and the same must be prosecuted in the same manner, as if it was an original bill.

Where any alteration or amendment is made to the plaintiff's bill before the suit is at issue, it is deemed by the court an amended bill, and if such amendments are required to be answered, it subjects the plaintiff to 20 s. costs.

If the defendant demurs to the plaintiff's bill from any error or mistake therein, the plaintiff must immediately procure an order to amend on 20 s. costs, for if before such step is taken by the plaintiff, the defendant obtains an order to set down and argue the demurrer, the plaintiff will then be obliged to pay the defendant the costs of obtaining such order, and also the said 20 s. costs.

If the plaintiff find it necessary to add a defendant to his bill before publication passed, and the amendment made thereto is so small as not to require a new bill, nor any further answer from the defendant thereto, the same may

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be done by the plaintiff without costs, but if a defendant is added after publication passed, the cause (as to such defendant), must be heard on bill and answer only.

Before the defendant's answer is put in, such defendant's name may be struck out of the bill at the plaintiff's request, or if the defendant has put in his answer, and disclaims the charge in the bill, or appears disinterested, such defendant may be struck out any time before the hearing, but after appearance and answer, it must be with costs, the bill as to such defendant being dismissed.

Where any new matter appears pending a suit, and after replication, or when the cause is at issue, which becomes necessary for the plaintiff to set forth to the court, it cannot be done by amending his bill; but must be shewn to the court by way of *supplemental bill*, which bill the plaintiff files of course, without any order obtained for that purpose.

Note, An amended bill cannot be filed without an order obtained for that purpose, which must be by petition or motion.

If the defendant answers insufficiently, and the plaintiff excepts to the same, and the master on the reference reports the defendant's answer insufficient: the plaintiff may by petition or motion procure an order to amend his bill without costs, stating to the court that the master has reported the defendant's answer insufficient, and praying that the defendant may answer the exceptions and amendments at the same time.

Where the plaintiff excepts to the defendant's answer, and the defendant submits to answer the exceptions, if the plaintiff finds it necessary to amend his bill, it may be done without costs.

A N S W E R S.

An answer is a reply made by the defendant to the charge brought against him by the plaintiff's bill, in which he protests against the said bill, for being too general, absurd, obscure, vague, and unduly set forth, &c. and the oath he takes on putting in the same, is, he swears as to his *knowledge*, as to what concerns his own acts, and according to his *belief* to what concerns the act of a stranger.

If he lives in *London*, or within *ten* miles thereof, by the rules of the court, he has *eight* days from his appearance to put in his answer to the plaintiff's bill. If he lives above *twenty* miles, he is entitled to sue out a commission to take his answer in the country, on motion of court, or petition to the *master of the rolls*, returnable the *first* return of the term then next following, and of course has till that time to answer the plaintiff's bill.

When the defendant must put in his answer.

In either case the defendant may obtain further time for putting in his answer to the plaintiff's bill, if he thinks proper, or the necessity of the case requires it, on reasonable cause shewn to the court for that purpose on petition, *see the head petitions*.

If the defendant appears to the plaintiff's bill in the *vacation* preceding the return of the *subpoena*, he must put in his answer to the plaintiff's bill in *eight* days after his appearance, unless he petitions for time, as by such appearing he has waved the time allowed for answering till the return of the *subpoena*, by appearing sooner than was necessary, because he need not have appeared till *four* days after the return of the *subpoena*.

In a town cause.

If the defendant's answer to the plaintiff's bill is to be taken by commissioners in the country,

In a country cause.

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country, his solicitor leaves commissioners names with his clerk in court, who thereon calls on the plaintiff's clerk in court for commissioners names to see the defendant's answer taken in the country. This step is termed *crawing a dedimus Po.* Each party leaves what commissioners names he thinks proper, which are all inserted in the *de po.* And the plaintiff's clerk in court directs (as instructed by the plaintiff's solicitor) to which of the plaintiff's commissioners the defendant is to give notice of executing the commission.

The defendant's solicitor in town sends down the *de po.* to his agent in the country, properly sealed: the agent according to the directions of the *label* on the *de po.* must give *six* days notice to the plaintiff's commissioners in the country of executing such commission.

Note, One commissioner attending on each side is sufficient for the purpose of taking the defendant's answer and returning the commission, but in case none of the plaintiff's commissioners attend, the defendant must have two of his, to attend taking the answer, because no less than *two* can take the answer and return the *de po.*

The commissioners being met, one of the defendant's commissioners opens the commission and administers the oath to the defendant to the effect following.

“ Have you heard this your answer read,
 “ do you exhibit it as your answer to the bill
 “ of complaint of *R R.* to which the defendant answers,” *yes.* Then the commissioner administers to the defendant the following oath.

*You shall swear that what is contained in this
 your answer, as far as concerns your own
 act and deed, is true to your knowledge, and
 that*

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that which relates to the act and deed of any other person or persons, you believe to be true.

So help me God.

The defendant's answer being so taken, is to be annexed to the commission, and the commissioners then write the caption at the foot of the answer thus :

This answer was taken, and the abovenamed J. K. the defendant, was duly sworn to the truth thereof, on the Holy Evangelists, at the house of A. A. known by name of the White Swan, situate in the parish of B. in the county of H. on the day of in the 14th year of the reign of his Majesty King George the third, and in the year of our Lord, 1774, by virtue of the commission hereunto annexed before us.

K. B.

J. L.

The foregoing caption of the defendant's answer is to be properly varied, according to the nature of the thing to be sworn to, whether an answer, plea, and answer, &c. and being subscribed, the commissioners indorse on the commission their return thereof, in manner following :

The execution of this commission appears in a certain schedule (or schedules if the answer contains more than one skin) hereunto annexed.

K. B.

J. L.

Note, If the defendant's solicitor will give commissioners names, he may make out a de po. without

without being obliged to petition for that purpose; but if no commissioners names are given by the plaintiff's solicitor, then the defendant's solicitor, by petitioning the court, can compel the plaintiff's solicitor to give commissioners names.

It is customary when the agent receives instructions to appear in the vacation to set down his appearance for the first return of the next term, and then he probably may get a copy of the bill directly, by which he will gain considerable time to prepare his answer, without applying for time, having till the return of the writ.

When the answer is sworn to, the commissioners, fold it up, binding it round with tape, and putting their names and seals thereto, and one of them takes it away, in order to bring or send it to *London* to be filed, if sent to the solicitor in *London* by a commissioner, write on some part betwixt the tape thus.

November, 7, 1774, on the oath of S. S. (the person bringing it) at the public office before.

Go with the person to the public office to leave it, where he will be sworn, that he received it from one or more of the commissioners therein named, and that it has not been opened or altered since he so received it, you pay 1 s. for the oath, and then give notice to your clerk in court that the answer is left, but if a commissioner brings up the answer write on it thus:

November 7, 1774, received by the hands of J. L. one of the commissioners.

The answer and commission may be left at the public office, or given to the defendant's clerk in court, as from him no oath is required.

Note, Where an answer is taken by commission, it is not necessary it should be signed by council.

On the coming in of the defendant's answer, the plaintiff's solicitor bespeaks an office copy thereof, of his clerk in court, for which, as for the depositions, and other office copies, you pay 10 *d. per folio*.

INSTRUCTIONS for drawing ANSWER.

The solicitor having obtained an office copy of the plaintiff's bill, must carefully read over the same to his client, and take down his answer to each particular charge in the bill. This step he will find himself best able to accomplish, by making an abstract of the plaintiff's case, or charge against the defendant, and the interrogations thereon from the bill, when he has thus reduced the plaintiff's charge into a narrow compass, he will presently see if he is sufficiently instructed by his client to draw his answer. The solicitor in drawing the answer must be particularly careful to answer or deny the whole of the plaintiff's case, and also the interrogations thereon, or the plaintiff may except against the same for insufficiency.

An answer consists of four parts, *viz.* the *title* i. e. The joint and several answers, &c. *The protestation* i. e. This defendant now and at all times hereafter, saving, &c. *The reply to the plaintiff's charge* i. e. He this defendant doth answer and say, that &c. *The conclusion praying relief and costs* i. e. And this defendant denies all, and all manner of unlawful combination, and confederacy, wherewith he is charged without that, &c.

The

The common forms, before and after an answer.

Title. The answer of C. C. one of the defendants to the bill of complaint of D. D. complainant.

Protestation. This defendant now and at all times hereafter, saving and reserving to himself all, and all manner of benefit and exception that may be had or taken to the many errors, uncertainties, and manifest insufficiencies in the complainant's said bill of complaint, contained for answer thereunto, or unto so much thereof, as this defendant is advised is material or necessary for him to make answer unto, he doth answer and say, that, &c.

Conclusion. And this the defendant denies all, and all manner of unlawful combination and confederacy, wherewith he is charged without that, that there is any other matter, cause, or thing in the complainants said bill of complaint contained, material or effectual in the law for this defendant to make answer unto, and not herein, and hereby well and sufficiently answered, avoided, traversed, or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honourable court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

When before a further answer on exceptions taken to the first answer. The said defendant for further satisfaction to this honourable court, and for answer unto the several exceptions taken by the complainant to his former answer, doth answer and say, &c.

When after the foregoing answer. Without that, that, &c. as in the former.

The

The answer being drawn, and the draft thereof perused and signed by council, whose fee is from *one* guinea to *five*, according to the length of the answer, and the difficulty he has in settling the same. Ingross the same on a double 12*d.* skin of parchment. The defendant must sign his christian and surname at the bottom of the answer, on the right hand, directly under the councils name who settled the answer; this done write the *jurat* at the top of the ingrossed answer on the left hand corner in the following manner.

The answer being compleat for putting in, carry the defendant to the public office in *Symonds Inn*, where a master will swear him to his answer, pay for swearing the same 1 s. you leave the answer when sworn at the public office, and give notice to your clerk in court that the same is put in.

Answer to a Bill for a Discovery.

The joint and several answer of Title.
George Gordon and Ann his wife,
two of the defendants to the bill
of complaint of Tobias Priest,
William Roberts, and Thomas
Roberts, Eleanor Roberts, Robert
Taylor, John Finch, Philip Har-
ris, and Jervis Giffard, com-
plainants.

These defendants now and at all times hereafter, saving and reserving to themselves all, and all

all manner of benefit and advantage of exception that may be had or taken to the many errors, uncertainties, and manifest insufficiencies in the complainant's said bill of complaint, contained for answer thereunto, or unto so much thereof as these defendants are advised is material or necessary for them to make answer unto, they do answer and say, &c.

Reply.

And first, the defendant *Ann* for herself saith, she hath been informed and believes, that the Dean and Chapter of *Westminster*, by two several indentures of lease, bearing date on or about the 4th day of *April*, which was in the year of our Lord 1720, demised part of the leasehold premises in the bill mentioned, to *Sarah G.* widow, for the term of forty years, in trust for *J. D.* in the bill named, and *Elizabeth* his wife, which said *J. D.* was the father of this defendant *Ann*; and this defendant *Ann* further saith, that she hath been informed and believes, that the Dean and Chapter of *St. Paul*, by indenture of lease bearing date on or about the 28th day of *April* in the same year of our Lord 1720, demised the remaining part of the said leasehold premises in the bill mentioned, to the said *Sarah G.* for the term of forty years, in trust for the said *J. D.* and *Elizabeth* his wife; and this defendant *Ann* further saith, that the said *J. D.* survived his said wife *Elizabeth*, and afterwards died intestate, and administration of the goods and effects of the said *J. D.* was on or about the 30th of *July* 1729, granted to this defendant, being the only child of the said *J. D.* and then married to *J. B.* in the bill named; and this defendant *Ann* further saith, that her said father having in his life time mortgaged the said leasehold premises to one *S. S.* she this defendant, (as she is advised) became entitled to the equity of

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redemption of the said mortgaged premises as administrator of her said father; and this defendant *Ann* further saith, that her said late husband *J. B.* and this defendant having an opportunity to renew the said three several leases, did for that purpose apply to *J. B. T. B.* and *Elizabeth S.* (who were the administrators of the said *S. S.* the mortgagee) to surrender the said three leases to the said Dean and Chapter of *Westminster*, and Dean and Chapter of *St. Paul* respectively, and to advance out of the estate of the said *S. S.* the sum of 100 *l.* to pay the fine and defray the other expences of the said renewal, and agreed that the said new leases should be taken in the name of *S. W.* and *N. A.* respectively, and that such leases should be assigned in trust in the first place, for securing the money due to the said *J. B. T. B.* and *Elizabeth S.* the administrators aforesaid, and the said 100 *l.* with interest, and afterwards in trust for the said *J. B.* and this defendant *Ann*; and accordingly, in pursuance of the said agreement, the said leases were, as this defendant believes, surrendered and delivered up to the said Dean and Chapter of *Westminster*, and the Dean and Chapter of *St. Paul* respectively; and the said Dean and Chapter of *Westminster* did thereupon, as this defendant believes, by two several indentures of lease, bearing date on or about the 7th of *December* 1731, demise to the said *S. W.* part of the said leasehold premises for the term of forty years from *Michaelmas* then last past; and the said *S. W.* did afterwards, as this defendant hath been informed, and believes, by indenture bearing date on or about the 18th of *January* 1731, assigned the said leasehold premises demised to him as aforesaid, unto *T. B.* in trust for the said *J. B. T. B.* and *Elizabeth S.* under a proviso that if the
said

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said *J. B.* and this defendant, his then wife, should pay the said *J. B.* 279 *l.* 11 *s.* with interest; and to *T. B.* 559 *l.* 2 *s.* with interest; and to *Elizabeth S.* 419 *l.* 6 *s.* 6 *d.* with interest, on the 18th of *March* then next; then the said *T. B.* should assign the said premises to the said *J. B.* and this defendant, his then wife, or as they should direct; and the said Dean and Chapter of *St. Paul* did, as this defendant believes, by another indenture of lease, bearing date on about the 20th of *December*, 1732, demise to the said *N. A.* the remaining part of the said leasehold premises, for the term of forty years, from *Michaelmas* then last past; and this defendant *Ann* further saith, that before any assignment was made of the said leasehold premises by the said *N. A.* this defendant's late husband, the said *J. B.* died intestate some time in or about the month of *April* 1733, and administration of his goods and effects was granted to this defendant, on or about the ——— day of ——— and this defendant *Ann* further saith, that by indenture bearing date the 20th of *June* 1733, in consideration of the sum of 150 *l.* 17 *s.* 11 *d.* paid to this defendant by *J. S. Esq;* in the bill named, and in consideration of 299 *l.* 16 *s.* to the said *J. B.* and of 599 *l.* 12 *s.* 2 *d.* to the said *T. B.* and of 449 *l.* 13 *s.* 11 *d.* to the said *Elizabeth S.* respectively, paid by the said *J. S.* amounting in the whole to the sum of 1500 *l.* the said leasehold premises were conveyed and assigned to the said *J. S.* his executors and administrators for the remainder of the said term, under a proviso that if this defendant should pay to the said *J. S.* the sum of 1500 *l.* with interest, at 4 *l.* 10 *s.* per cent. per ann. on the 30th of *June* next following, the date of the said indenture, that then the said *J. S.* should assign the said leasehold premises to this defendant, or as she should direct; and

and this defendant in the said last mentioned indenture, is named as well administratrix of her said late father *J. D.* as of her said late husband *J. B.* and this defendant *Ann* further saith, that she hath been informed, and believes, that the said 1500 *l.* mentioned in the said mortgage to be paid by the said *J. S.* were the proper monies of Dame *Elizabeth V. S.* and placed out in the name of the said *J. S.* and this defendant *G. G.* saith, that he believes the matters and things herein before set forth by his said wife to be true, but both these defendants say, that for their greater certainty, as to their title to the said leasehold premises, they crave leave to refer themselves to the title deeds in the hands or power of the said *J. S.* or the said Dame *Elizabeth V. S.* and these defendants say, they are advised, and humbly insist, that (as this defendant *Ann* doth not derive her title to the said leasehold premises under the said *J. B.* but in the manner before set forth) the said leasehold premises are not assets of the said *J. B.* nor any ways liable to the payment of his debts; and these defendants say, that by articles of agreement, bearing date on or about the 20th of *February 1729*, the said *J. B.* covenanted and agreed with *J. M.* of the parish of *St. Giles in the Fields*, in the county of *Middlesex*, surgeon, that the said leasehold premises should with all convenient speed be sold, if they the said *J. B.* and this defendant *Ann* his then wife should so think fit, and the money arising from such sale should be applied and disposed of as in the said articles is mentioned; and these defendants say, they do not pretend that the said articles were made in pursuance of any agreement previous to the said *J. B.*'s marriage with this defendant *Ann*; nor do these defendants at all insist upon the said articles for that, as these defendants are advised, the covenants
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of the said *J. B.* will not, for the reasons before mentioned, any ways affect the said leasehold premises; and these defendants admit, that they have possessed themselves of goods, chattels, and effects of the said *J. D.* more than sufficient to satisfy the said *J. D.*'s debts, but the effects of the said *J. D.* are not, as these defendants are advised, liable to the payment of the debts due to the complainants from the aforesaid *J. B.* and the defendant *Ann* for herself saith, that she never employed the complainants, or any of them, to do any work upon the said several leasehold messuages and premises, or to find and provide materials for the repairs thereof, but this defendant believes her said late husband, *J. B.* might employ the complainants respectively, to do such work as aforesaid; and this defendant *Ann* further saith, she never proposed to give to the complainants *T. P.* a letter of attorney to receive the rents and profits of the said leasehold premises, and thereout to pay himself and the rest of the creditors for the said work, or to that or any other such effect as in the bill is charged; but this defendant *Ann* saith, that when her said late husband *J. B.* lay in his last illness, and was apprehended to be a dying man, the said *T. P.* came to her said husband, and desired that he would make him some security for his debt; and this defendant was thereupon desired to leave the room, and what proposals might afterwards be made by her said late husband to the said *T. P.* for the purpose aforesaid, this defendant knows not; and this defendant *Ann* further saith, that after the death of her said late husband *J. B.* the said *T. P.* came and threatened to sue this defendant; and she this defendant was told, that the said leasehold premises were liable to the payment of the said *J. B.*'s debts; whereupon one Mr. *J. W.* who was concerned
for

for the former mortgages, and a friend of the said *J. P.* said to this defendant, that he would make the said *T. P.* and the rest of the creditors easy; and this defendant knows not but the said *J. W.* might prepare some draft of a mortgage for the purpose aforesaid; but this defendant never saw such draft, or heard the same read; and this defendant *G. G.* saith he married the other defendant *Ann*, on about the 13th of *October* last, and never heard of any such mortgage or security, save by the bill, nor was it ever proposed to him to join in any such thing; and these defendants *admit* that they have been sued by the complainants as in the bill is mentioned, and believe that the complainants have recovered such several judgments, and for such respective sums as in the bill are set forth, but without costs; and these defendants *admit*, that they pleaded to the several actions brought by the complainants against these defendants, such bonds as in the bill are mentioned; and these defendants say the same were given for the payment of 55 *l.* and 100 *l.* respectively; and these defendants believe the said bonds were entered into for just debts, and that the same or any part thereof have been no ways discharged or satisfied; and these defendants further answering, *say*, they have in the first schedule annexed to this their answer, which they pray may be taken as part thereof, set forth a full, true and just account to the best of their knowledge and belief, of all the goods, chattels, rent in arrear, and other the personal estate of the aforesaid *J. B.* deceased, except his wearing-apparel, come to their, or either of their hands, custody, or power, or to the hands, custody or power of any other person by their order, and which they pray may be taken as part thereof; these defendants have set forth an account to the best of their

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knowledge and belief, of the debts due from the said *J. B.* at the time of his death, except the abovementioned debt due to the complainants; and these defendants say, *that* on or about the 4th day of *January* last, they caused an inventory to be made of the goods of the aforesaid *J. B.* except his wearing apparel, and caused the same to be appraised by two sworn appraisers, which said inventory and appraisal is set forth in the first schedule aforesaid; and these defendants say, they believe the said inventory and appraisal was made justly and fairly, and according to the true value of the several particulars therein contained; and these defendants say, they have not concealed or wasted any part of the said *J. B.*'s estate, nor have they delivered up any securities for money, and taken new securities in their or either of their own names, as in the said bill is charged; *And* these defendants deny all and all manner of unlawful combination and confederacy, wherewith they are charged; without that, that there is any other matter, cause or thing in the complainants said bill of complaint contained, material or effectual in the law for them these defendants to make answer unto, and not hereby well and sufficiently answered, avoided, traversed or denied, is true, to the knowledge and belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honourable court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in the law, in this behalf most wrongfully sustained.

Conclusion.

T. BARNARDISTON.

The

The answer of *E. N.* defendant,
to the Bill of complaint of
W. B. and *Mary B.* complain-
ants.

The said defendant now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties and imperfections of and in the complainants said bill of complaint contained for answer thereunto, or unto so much thereof as this defendant is advised, is material for him this defendant to make answer unto; he answereth and saith, that he doth believe and admit it to be true, that *J. E.* in the said complainants bill named, was possessed of, or otherwise well and sufficiently entitled unto, a certain piece or parcel of ground, with a brick messuage or tenement, and other erections or improvements thereon, at *Stoke Newington* in the county of *Middlesex*, for the remainder of a term of 89 years thereof granted to him the said *J. E.* by indenture of lease, bearing date on or about the 14th day of *August*, in the year of our Lord 1704, and to commence from the 24th day of *June* then last past, at the yearly rent of 5 *l.* payable as therein is mentioned; but for this defendant's greater certainty as to the date and contents of the said indenture of lease, this defendant craves leave to refer thereto, when the same shall be produced to this honourable court, which said indenture of lease this defendant doth admit, is now in his this defendant's custody: and this defendant further answering saith, that he believes it to be true, that the said *J. E.* being so possessed or entitled as aforesaid, did by indenture, bearing date on or about the 1st day of *March*, which

Answer to a bill brought by one daughter and her husband, against the other daughter and her husband, for a discovery of the personal estate of their late father, come to the hands of the defendant and his wife.

was in the year of Lord 1704, and made or mentioned to be made between the said *J. E.* of the one part, and *T. A.* and *J. K.* (who as this defendant believes are both since dead of the other part, for the consideration therein mentioned, did assign and set over unto the said *A.* and *K.* their executors, administrators, and assigns the said indenture of lease, and the premises thereby demised, to hold to the said *A.* and *K.* and the survivor of them, and to the executors and administrators of such survivor for the then residue of the said term of 89 years, upon the several trusts in the complainants said bill of complaint for that purpose mentioned and set forth: and this defendant doth likewise believe it to be true, that there is some clause or proviso in the said indenture of assignment, whereby the said *J. E.* had power to revoke or alter all or any of the uses, limitations, or trusts therein contained; but for this defendant's greater certainty as to the date and contents of the said indenture of assignment, this defendant craves leave to refer thereto when the same shall be produced to this honorable court, which said indenture is now in the custody or power of Mr. *J. S.* this defendant's late proctor, as this defendant believes, who refuses to deliver up the same to this defendant, although he hath been several times applied to by or on the behalf of this defendant for that purpose: and this defendant further answering, doth admit it to be true, that the said *J. E.* was also possessed of, interelled in, or otherwise well entitled unto one other piece or parcel of ground, with a brick messuage or tenement, and other erections or buildings thereon, situate and being at *Stoke Newington* aforesaid, and which he held by virtue of or under a certain indenture of lease, bearing date on or about the 14th day of

August

August, which was in the year of our Lord 1704, thereof granted to him by T. M. for a term of 89 years and an half, commencing from the 24th day of *June* then last, at or under the yearly rent of 5 *l.* and was also possessed of or entitled unto one other piece or parcel of ground, and five messuages or tenements, and other the erections or buildings thereon, at *Stoke Newington* aforesaid, which he held by lease from *Ann M.* widow, and J. M. gentleman, bearing date on or about the 21st day of *April*, in the year of our Lord 1717, for a term of 80 years, commencing from the 25th day of *December* then last past, at and under the yearly rent of 20 *l.* but this defendant doth not know or believe, that the said J. E. was possessed of, interested in, or entitled unto any other messuages or tenements, ground, erections or buildings whatsoever, save and except what are before mentioned and set forth: and this defendant further answering, saith, that he doth not know, nor can set forth, whether the said J. E. was ever minded or desirous to revoke the trusts or uses in the said indenture of the 1st of *March*, 1704, or to settle the same, together with his other messuages or tenements, in any different or other manner, neither doth this defendant know nor can set forth, whether the said J. E. did ever make or execute such indenture, as in the complainants bill is mentioned to bear date on or about the 21st day of *April*, in the year of our Lord 1717, and to be made between the said J. E. of the one part, and J. K. in the bill for that purpose named of the other part, nor whether the same, if any such was ever executed by him, is to the purport or effect in the bill for that purpose mentioned, this defendant having never yet seen the said indenture, nor ever heard thereof before the said com-
K 3 plainants

plainants put in their answer to the original bill lately exhibited against them by this defendant in this honourable court; but this defendant saith, that the said indenture of the 21st of *April*, 1717, (if any such there was or is, which defendant doth not admit) is not now, nor ever was in his this defendant's custody or power, nor to the best of this defendant's knowledge or belief ever was in the custody or power of the said *Mary*, this defendant's late wife, or of any other person or persons in trust for this defendant and the said *Mary* his late wife, or either of them, nor doth this defendant know or can set forth in whose custody or power the said deed or indenture (if any such there be) now is or ever was; and this defendant further answering, saith, that he doth admit it to be true that the said *J. E.* had issue by *Mary* his wife, two daughters, that is to say, *Elizabeth* the late wife of the said complainant *W. B.* and mother of the said other complainant, and *Mary* who first intermarried with *J. F.* and was afterwards the wife of him this defendant, and no other issue, as this defendant believes; and this defendant saith, that he hath heard and believes it to be true, that the said *Mary* this defendant's said late wife intermarried with the said *J. F.* at or about the time in the bill for that purpose mentioned; and hath likewise heard and believes, that the said *J. E.* gave or agreed to give as her marriage-portion, the sum of 200*l.* or some such like sum of money, but not more, as this defendant believes; nor doth this defendant know or believe that he the said *J. E.* laid out any sum or sums of money in buying her cloaths or apparel, other than what was incumbent upon or necessary for him to provide for her as his child: and this defendant further answering, doth believe
and

and admit it to be true, that the said *J. E.* departed this life, at or about the time in the complainants said bill of complaint for that purpose mentioned; and that he died intestate, leaving the said *Mary* his widow, and only two children, namely the said *Elizabeth* and *Mary* his two daughters then living, and that the said *Mary* his daughter was then married to the said *J. F.* but this defendant doth not know or believe that she was provided for or advanced in the world in any other manner than as is herein before mentioned; and this defendant doth admit it to be true, that the said *Mary* the widow of the said *J. E.* some short time after the death of the said *J. E.* procured letters of administration to be granted to her, by and out of the proper ecclesiastical court of all and singular the said *J. E.*'s personal estate; but for more certainty therein, this defendant craves leave to refer to the said letters of administration, when the same shall be produced to this honourable court: and this defendant saith, that he doth not know or believe, nor ever heard, save by the complainant's said bill of complaint, that the said *J. F.* ever became a bankrupt, or that any commission of bankruptcy ever issued against him, nor that he being thereupon found or declared a bankrupt, or an assignment being made of his estate and effects, the assignees under the said commission exhibited their bill in this or any other court, against the said *Mary* the widow and administratrix of the said *J. E.* or any other person or persons, as defendants, for the purposes in the complainants said bill for that purpose mentioned and set forth, nor that the said *Mary*, the widow and administratrix of the said *J. F.* put in her answer to the said bill, or thereby insisted in manner as in the complainants said bill is for

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that

that purpose mentioned and suggested; but this defendant saith, that in case any such commission of bankruptcy ever issued, or any proceedings had under the same, or any such bill or suit were at any time brought or commenced by the assignees under the said commission, he this defendant is an entire stranger thereto, having never heard thereof, save by or from the complainants said bill; and therefore this defendant must leave the complainants to make such proof thereof, as they shall think proper or be advised; and this defendant saith, that in case any such suit was ever commenced by the said assignees, yet this defendant doth not know or believe that the said assignees were fully satisfied that the said *Mary*, the daughter, had been fully advanced by her said father in his life-time, or that she was not entitled to any other customary or other further share of her said father's estate, or that for that or any other reason the said assignees proceeded no farther in the said cause; but this defendant saith, that he hath been informed and believes, that some time after the death of the said *J. F.* (which happened in or about the year of our Lord 1726 or 1727, as this defendant believes) a bill was exhibited by or on the behalf of one *A. W.* who was or pretended to be a creditor of the said *J. F.* against the said *Mary*, the widow; but whether any answer was ever put in to the said bill, or any other proceedings thereon had, this defendant knows not: and this defendant further answering, saith, that he doth believe and admit it to be true, that the said *Mary* the widow and administratrix of the said *J. E.* departed this life at or about the time in the complainants bill for that purpose mentioned, having first, as this defendant believes, duly made and published her
last

last will and testament in writing, bearing such date, and of such purport or effect, and thereof made or appointed such executors, as in the complainants said bill is in that behalf mentioned and set forth; and that the said testatrix afterwards made a codicil to her said will, bearing such date, and of such purport or effect as in the said bill is for that purpose mentioned and set forth, but for this defendant's greater certainty as to the date and contents of the said will and codicil respectively, this defendant humbly craves leave to refer thereto, or to the probate thereof, when the same shall be produced to this honourable court: and this defendant further answering, saith, that he doth admit it to be true, that *R. H.* and *D. C.* refusing to prove the said will and codicil, or to act in the trusts of the said will, and having renounced the said executorship, letters of administration, with the said will and codicil annexed, were afterwards granted by and out of the prerogative court of the Archbishop of *Canterbury*, unto *Mary*, this defendant's late wife, who, as this defendant believes, by virtue thereof, became possessed of such part of the personal estate of the said *Mary E.* as she could come at or receive, and also of the estate of the said *J. E.* unadministered by the said *Mary E.* and in particular of the said deed or indenture in the bill mentioned to bear date the 1st day of *March* 1704; but this defendant saith, that he doth not know or believe that the said *Mary* ever had or possessed herself of the said deed or indenture in the said bill mentioned to bear date on or about the 21st day of *April* 1717, but saith, that he hath been informed, and believes, that a memorial of the said last mentioned deed was entered in the office for regulating of deeds and conveyances of messuages, lands,

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lands, and tenements for the county of *Middlesex*, some time on or about the——day of——
 17——— which was about the space of
 —— after the death of the said
J. E. and which said memorial this defendant
 never knew or was informed of until some time
 on or about the 25th day of *March*, now last
 past; and this defendant saith, that he hath
 heard, and believes, that the said *R. H. D. C.*
 and *Elizabeth B.* plaintiff's late wife, or one of
 them, a few days after the death of the said
Mary E. locked up several deeds and writings
 relating to the estate of the said *J.* and *Mary*
E. or one of them, in a trunk, and removed or
 carried away the same from the said *Mary E.*'s
 late dwelling-house at *Stoke Newington*, unto the
 said *D. C.*'s house at or near *Queen Hithe, London*,
 and of which said trunk they the said *H. C.* (and
 plaintiff's said late wife, or one of them, had
 or took the key) and saith, that the same conti-
 nued there for the space of five or six months,
 to the best of this defendant's knowledge as to
 the time; and saith, that after the said *Mary*,
 this defendant's late wife, had procured letters
 of administration of the said *Mary E.*'s personal
 estate, to be granted to her, who thereupon de-
 manded, or caused to be demanded, the said
 trunk and writings, which were delivered to her
 accordingly, and were immediately carried or
 removed from the said *C.*'s house to Mr. *J. A.*'s
 at the *Bell Inn* in *Warwick-lane, London*, who
 thereupon observed or took notice, that the said
 trunk had been before opened, and that the
 lock thereof had been cut off and put into the
 said trunk, but by whom the same had been so
 opened, or by whose order, or for what reasons,
 this defendant is an entire stranger, as was also
 this defendant's said late wife, as this defendant
 believes; and this defendant further answering,
 doth admit it to be true, that the said *Mary*,
 this

this defendant's late wife, departed this life intestate, to wit, on or about the 18th day of *October*, in the year of our Lord 1742, without leaving issue; and that *Elizabeth*, the other daughter of the said *Mary E.* and wife of the said complainant *W. B.* and mother of the said *Mary*, survived the said *Mary* her sister, this defendant's late wife, but this defendant doth not know or believe that the said *Elizabeth*, at the death of the said *Mary* her sister without issue, by virtue of the appointment made by the will of the said *Mary E.* or by virtue of any power in the said deed of the 21st day of *March* 1717, (if any such deed there really was or is) became well entitled to all the leasehold premises in the bill mentioned, for the residue of the several terms therein then to come, but therein this defendant humbly submits himself to the judgment of this honourable court; and this defendant further answering, saith, that he believes it to be true, that the said *Elizabeth*, the other daughter of the said *J. E.* and *Mary* his wife, departed this life at or about the time in the bill for that purpose mentioned, and that she died intestate, without leaving any other issue besides the said complainant *Mary*, her only daughter; but whether, upon the death of the said *Elizabeth*, the said complainant, or either of them, became entitled to all or any part of the leasehold premises in the bill mentioned, for the then residue of the respective terms therein then to come, or to the original leases, or other deeds and writings relating thereto, or in particular to the indentures of the 1st of *March* 1704, and 21st of *April* 1717, (if any such deed or indenture of the 21st of *April* 1717, was ever really made or executed,) this defendant knows not, but therein this defendant humbly submits himself to the judgment of this honourable court; and this defendant

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dant further answering, doth admit it to be true, that he this defendant, since the death of his said late wife, hath procured letters of administration to her, to be granted to him this defendant, by and out of the prerogative court, and also letters of administration of the goods, chattels, and credits of the said *J. E.* unadministered by this said defendant's said late wife; and this defendant doth humbly hope and insist, that in regard the said *J. E.* died intestate, and was, as this defendant believes and doubts not but to prove, a freeman of the city of *London*, he this defendant is by virtue of the statute for distribution of intestates estates, and according to the custom of the city of *London*, or one of them, become intitled to—

—and to have or retain the original leases, and other title deeds and writings relating to the leasehold estates, late of or belonging to the said *J. E.* and this defendant further answering, saith, that he hath in the schedule here-under written, and which this defendant prays may be accepted and taken as part of this his answer to the complainants said bill of complaint set forth a true and particular account of all the deeds and writings relating to or concerning the leasehold estates of the said *J. E.* and *Mary E.* or either of them, which were at any time, according to the best of this defendant's knowledge, information and belief, delivered to, possessed by, or came to the custody or power of this defendant, and his said late wife, or either of them, or of any other person or persons, for or in trust for them, or either of them; and saith, that he hath been informed, and believes, that several of the deeds and writings relating to the said leasehold premises were possessed by, or came to the hands or custody of the said *Elizabeth B.* and as this defendant hath reason to believe,
hath,

hath, since her death, come to the hands or possession of the said complainants, or one of them; and this defendant further answering, saith, that he hath heard, and believes it to be true, that the said *Mary E.* was possessed of, or entitled unto, a certain piece or parcel of ground, situate, lying, or being in *Newington* road, in the parish of *Hackney* in the county of *Middlesex*, which she held by lease from *John H.* bearing date on or about the 15th day of *Dec.* 1720, for the term of sixty years, or thereabouts, commencing from *Michaelmas* - day 1720, at the yearly rent of 3 *l.* 10 *s.* as this defendant believes; and which said piece or parcel of ground is now let on building leases, at the clear yearly rent or rents of 10 *l.* or 12 *l.* as this defendant believes; and this defendant saith, that he doth not know, nor ever heard, nor doth he believe, that the said *Mary E.* was possessed of or entitled unto any pieces or parcels of ground, other than the pieces or parcels of ground, messuages, tenements or buildings, which she had or claimed by, from, or under the said *J. E.* her husband, other than and except the piece or parcel of ground last before mentioned, &c.

J. D.

The answer of *E. F.* his Majesty's Attorney - General, defendant, to the bill of complaint of *A. B.* complainant.

The said Attorney-General, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception to the many errors, uncertainties, insufficiencies, and imperfection in the complainants said bill of complaint, or to

Answer of the attorney general to a charity bill.

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to so much thereof as is material for this defendant to make answer unto, he answereth and saith, that he is a stranger to all and every the matters and things in the first bill contained, and leaveth the said complainant to make good the same if he can, by due proof, and submiteth the same to the judgment, order, and direction of this honourable court; and prays that this honourable court will take care of the charities mentioned in that bill of complaint, and give proper directions for the settling and establishment thereof, without that any other matter or thing mentioned, or contained in the said complainant's bill of complaint material or effectual in the law for this defendant to make answer unto, and not herein, and hereby well and sufficiently answered unto confessed, or avoided, traversed, or denied, is true to the knowledge of this defendant; all which things this defendant is ready to aver and prove as this honourable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf, wrongfully sustained.

E. T.

The Answer of A. B. Defendant to the Bill of Complaint of C. B. Complainant,

An Answer
to a bill of
foreclosure.

This defendant saving and reserving, &c. answereth and saith, that she doth admit that the indentures in the said complainant's said bill of complaint, alledged to bear date the 25th day of *March*, 1735, and the 7th day of *August*, 1736, were duly executed by the said parties therto, or of some of them, for such intent and purposes as in the said bill is set forth, according to the best of this defendant's knowledge, remembrance, and belief; but by which, for more certainty therein, and as to the contents thereof, she

ſhe this defendant craves leave to refer when the ſame ſhall be produced unto this honourable court; and this defendant doth admit, that ſhe this defendant having occaſion for a ſum of money, did apply to the complainant, and deſired him to aſſiſt her therewith, and that the complainant did agree to ſupply this defendant with 75 *l.* and that it ſhould continue for *four* years, without being called in, but the complainant did inſiſt that this defendant ſhould allow him out of the ſaid ſum 75 *l.* for inſuring this defendant's life; and the further ſum of 13 *l.* for intereſt of the ſaid 75 *l.* for the firſt *four* years, and that the ſame ſhould be deducted out of the ſaid 75 *l.* and that he would pay to this defendant the remaining 45 *l.* provided this defendant would permit him to deduct thereout the ſaid inſurance, and the ſaid 13 *l.* intereſt; and this defendant being in great neceſſity for money, did ſubmit thereto, and thereon this defendant doth believe, that ſuch indenture of the 7th of *Auguſt*, 1736, as in the ſaid complainant's ſaid bill, was ſet forth as duly executed by this defendant, and the receipt given for 75 *l.* But this defendant does inſiſt no more was paid to this defendant than 45 *l.* and that this defendant has frequently offered by herſelf or agents to pay him that ſum with lawful intereſt and coſts of ſuit, but he reſuſed to accept the ſame; and this defendant does not know or believe that the complainant has ever received any part of the ſaid money or intereſt, ſave as aforeſaid; but this defendant humbly hopes, that the ſaid complainant ſhall not be aided or aſſiſted by any decree of this honourable court in order to the forecloſing the poſſeſſion of the ſaid demiſed premiſes, or any part thereof, ſhe this defendant now being ready and willing to account with the complainant, for the ſum by him really advanced, together with reaſonable intereſt for the ſame, from the time of the ſaid

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complainant advancing the same to this defendant; and this defendant humbly hopes, that on paying and discharging the said principal sum of 45 *l.* and interest for the same, the said complainant shall be obliged to deliver up, or assign over the said indenture, of the 7th of *August*, 1736, mentioned in the said bill, and all other deeds and writings in his custody, or power, to or for the use of this defendant, freed and discharged of and from all incumbrances done by him or any other person or persons, claiming by, from, or under him; and this defendant doth deny, &c.

J. M.

*The Answer of R. L. one of the Defendants to the
Bill of Complaint of A. T. Complainant.*

Answer to
a bill for
discovering
a mortgage.

This defendant saving &c. faith, that he hath heard, and believes it to be true, that *T. W.* late of———deceased, in the complainant's said bill of complaint named, might be indebted to the said complainant; but the particular sums or persons, he this defendant knows not: and this defendant further faith, that he hath heard, and believes it may be true, that the said *T. W.* was at the time of his death seised of the manor of *C.* and other the premises in the complainant's said bill mentioned, to him and his heirs, and that they were of the yearly value of 200 *l.* and upwards, and that the said *T. W.* might make such will as in the said complainant's bill is set forth: and this defendant further faith, that some time before the death of the said *T. W.* this defendant recovered judgment against the said *T. W.* for the several sums of 150 *l.* 40 *l.* and 110 *l.* making together 300 *l.* And the said *T. W.* for the further securing the repayment of the 300 *l.* to this defendant, did by indenture, bearing

ing date the 29th day of *August*, in the year of our Lord 1738, in consideration thereof, and of the sum of 5*s.* to him in hand paid by this defendant, assign unto this defendant (*here set forth the deed of assignment*) to hold to this defendant, his executors, administrators, and assigns, for the term of 1000 years, at a pepper-corn rent, subject to redemption, on payment of 300*l.* and interest, in manner therein mentioned, as in and by the said indenture, in the custody of this defendant, when produced to this honourable court, will appear: and this defendant further saith, that the said several securities were given for money really and *bona fide* due and owing to this defendant, from the said *T. W.* at the several days and times that the said several securities were given and entered into, and the whole sum of 300*l.* and interest was due and unpaid at his death: and this defendant further saith, that he is ready and willing, on being paid what is due for principal and interest, and having his full costs paid, to assign his said mortgage and judgments, as this honourable court shall direct; and this defendant doth deny all and all manner of unlawful combination and confederacy, wherewith he is charged in and by the said complainant's said bill of complaint; without that, &c.

T. S.



The

The several answer of *R. L.* one of the defendants to the information or bill of complaint of his Majesty's Attorney-General, at the relation of *T. B. G. M. G. S. E. G.* the elder, *T. L.* and *J. B.* and the rest of the poor inhabitants of the city of *C.* complainants.

Answer of
R. L. to
the charity
bill of Co-
ventry.

This defendant saving &c. saith, that he believes it to be true, that *W. B.* in the said bill or information named, did make and publish his last will and testament of the date, and to the effect in the said information for that purpose set forth; but in regard this defendant saith that he knows nothing of his own knowledge of the suit and proceedings in the said information mentioned, but this defendant saith that by deed-poll or letter of attorney, bearing date the 18th day of *June*, 1722, and duly executed, as this defendant believes, by *J. M.* then mayor of *Coventry*, *D. B.* of *Wokingham* in the county of *Berks*, gent. *J. C.* of *Wokingham*, gent. since deceased, *J. L.* of *Wokingham*, aforesaid, baker, and *T. N.* who was then, as this defendant believes, minister of *Wokingham*, in the said information named *T. B.* the then minister of *Buifield*. *R. R.* the then minister of *Finchamstead*, reciting as therein is recited, did according to their several interests and trusts in the charity therein mentioned, (being as this defendant believes, the same charity estates in the said information mentioned) authorise and appoint this defendant, from time to time, to collect and receive the rents and profits of the said charity estates, all arrears there then due and owing to and from

from any of the tenants of the said estates, and to adjust and settle the accounts of any such arrears of rent, and to make such allowances to such tenants of the premisses as should be just and reasonable; and did thereby appoint the several tenants of the said estates to pay their rents accordingly to this defendant, for their use, and in case any such tenants should fail to pay their rent or arrears of rents to this defendant, as before directed, they did thereby give and grant to this defendant full power and authority to proceed against such tenants by distress, or otherwise by due course of law, in their names, for the recovery of the said rents and arrears of rents, or to that effect, as by the said letter of attorney or deed-poll, now in the custody or power of this defendant ready to be produced, may appear: and this defendant saith, that in pursuance of the said letter of attorney, he this defendant hath ever since, from time to time, received the rents of the said estates, or such part thereof as he could, to the 25th day of *March* 1741: and this defendant further saith, that *W. D.* late of, &c. gent. deceased, being, as this defendant believes, appointed auditor of this defendant's said accounts, he most times during his lifetime was, together with one *T. L.* who, as this defendant believes, was clerk to the said *W. D.* present with this defendant when he received the rents of the said estates; and soon after this defendant had from time to time received the same, he this defendant delivered his this defendant's accounts of and concerning the same, to the said *W. D.* and he from time to time paid him a moiety of such rents for the use of the corporation of *Coventry*, and 2*l.* 10*s.* for his salary half-yearly, to *Michaelmas* 1736, and took receipts in the receiving-book for the same, save only that there is one in the said book

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book which the said *W. D.* forgot or omitted to sign, although this defendant paid him the money mentioned in that receipt, and the other moiety for the said clear rents. This defendant from time to time paid the same to Mr. *J. L.* one of the trustees for *Wokingham*, and one of the defendants to the said information, and from time to time took receipts from him for the same in the aforesaid book: and this defendant further saith, that the said *W. D.* did by himself, receive the rents of the said estates for *Lady day* 1737, by reason this defendant was then out of town, and gave his receipts for the same to the tenants; but this defendant soon after his return to *London*, went to the tenants and took up the said *W. D.*'s receipts, and gave them receipts in lieu thereof, with this defendant's own name; and when the said *W. D.* had audited that half year's account, he paid this defendant one moiety of the clear rents of the same, for the use of the trustees of *Wokingham*, except the sum of 10*l.* for which he gave this defendant his note, which he never paid; however, this defendant paid to the said *J. L.* the full moiety of the said *Lady day*'s clear rents, and for the use of the said town of *Wokingham*, and took his receipt for the same: and this defendant further saith, that at or about *Michaelmas* 1737, *S. D.* gent, the son of the said *W. D.* (who was then dead) having been, as defendant believes, appointed auditor of the said accounts, he this defendant, from *Michaelmas* 1737, delivered his accounts of his receipts and payments relating to the said estate to the said *S. D.* and from time to time paid him a moiety of the clear rents of the said estates for the use of the corporation of *Coventry*, and the sum of 2*l.* 10*s.* half-yearly for his salary (in the same manner as he used to do to the said

saïd *W. D.*) to *Michaelmas* 1740, and took receipts for the same from the saïd *S. D.* in the saïd receiving-book, as by the several receipts herein before mentioned, now in this defendant's custody, ready to be produced, may appear: and this defendant saith, that although this defendant hath collected the rents of the saïd estates for so many years, and kept the accounts thereof as aforesaïd, yet he never deducted thereout any thing for his trouble, or had any allowance or satisfaction for the same, and therefore humbly hopes that he shall now be at liberty to retain or be paid a reasonable satisfaction for his trouble in collecting and receiving the saïd rents; and this defendant denies that he ever refused to let his accounts be inspected by any person, on behalf of the saïd Attorney General, or of the saïd relators, or to discover by or under what authority he took upon himself the receivership of the saïd rents; and saith, that he was put in as receiver of the saïd rents, by the authority aforesaïd, and not otherwise, and never did pretend that he was put in by any other authority; and this defendant denies that there are in his saïd accounts, to the best of his knowledge and belief any, items or charges which ought not to be charged or allowed, or that he hath omitted to insert therein any sum or sums of money which he hath received; and this defendant saith, that he hath inspected the accounts marked with the letter *A.* left by the relators with their clerk in court, and saith the same to the best of his observation and belief, are or do contain true copies of this defendant's accounts relating to the saïd estates, to the time the same are carried down in the saïd paper: and this defendant does not know or believe that the saïd accounts are untrue in any
2 respect:

respect: and this defendant saith, that he has in the first schedule to this his answer annexed, and which he prays may be taken as part thereof, set forth a true copy of his accounts relating to the said estates, and his receipts of the rents thereof, from the time the said accounts so left with the plaintiff's clerk in court are brought down, to *Michaelmas* last, to which the said accounts are audited and settled by the said *S. D.* in the said receiving-book; and in the second schedule to this his answer annexed, and which he prays may be taken as part thereof, he hath set forth a true rental to the best of his knowledge and belief of the leasehold houses in question: and this defendant says, that he does not know, but hath heard and believes, that the lease of the house called the *Dolphin*, or the *Dolphin alehouse*, in the bill mentioned, will expire at *Michaelmas* 1742, and that the lease of the house in *Woodstreet*, in the bill mentioned, will expire at *Michaelmas* 1768, that the clerk of the merchant taylors company mentioned in the bill, hath agreed to grant, or that the said company hath agreed to grant, or granted a lease of the said *Dolphin alehouse*, to commence on the expiration of the present lease, to one *J. E.* to hold for the term of 31 years, at the yearly rent of — pounds, only paying no more than — pounds, for a fine, but whether the other defendants, or any of them, ever applied to procure a renewal of the lease of the said house, for the benefit of the said charity, this defendant knows not: and this defendant saith, that to the best of his remembrance and belief, he is a stranger to, and knows nothing of the rest of the matters in the bill mentioned; and this defendant denies the combination in the bill charged upon him: without that, that, &c.

E. GREEN.

The

The answer and disclaimer of
C. D. one of the defendants
 to the bill of complaint of
A. B. complainant.

This defendant now and at all times saving, A general answer, and disclaimer.
Ec. faith, that he this defendant, on behalf of *E. F.* one of the other defendants in the bill named, did about 15 years ago, contract and agree with *G. H.* in the bill named for the purchase of the messuage or tenement, *Ec.* now in question, and in possession of the defendant, *Ec.* which said messuage, *Ec.* at that time, had been in possession of the said *G. H.* and, *Ec.* in the bill named, or one of them, for above—years before, for the purchase whereof this defendant on behalf of the said *E. F.* agreed to give, and accordingly did give, and pay to the said *G. H.* the sum of — pounds, which was the full and real value thereof. And in consideration thereof, the said *G. H.* and *E.* his wife, by deed indented, and by fine with proclamations by them levied in his Majesty's court of *Common Pleas*, at *Westminster*, in, *Ec.* term, which was in the — year of the reign of — *Ec.* By virtue of which fine and deed so made and levied to *E. F.* as aforesaid, he, as this defendant hath heard and believes, entered on, and became seized of the said messuage or tenement, with the appurtenances, and continued so seized thereof, without any entry or claim made by the said complainant, or any other person or persons, until, *Ec.* — in the year — *Ec.* when the said *E. F.* as this defendant hath heard and believes, by good conveyances in the law, and in consideration of the sum of — *Ec.* to him *bona fide* paid, sold and conveyed the said messuage or tenement, *Ec.* with the appurtenances,

to the said defendant, &c. and his heirs, who thereon entered on, and was and yet is seized and possessed of the same; and saith, that he doth not know that the said — &c. in the bill named, was ever seized of the said premises, or any part thereof; and saith, that he this defendant was advised and believes the said G. H. and E. his wife, had good right and title to settle the inheritance of the said premises, so purchased by the said E. F. as aforesaid. And this defendant saith he never had any notice of any right or title, the complainant or any other had, or might or could claim, of, in, or to the same, or to any part thereof, before the filing of the said complainant's bill. And this defendant saith, that he this defendant never had, nor claimed to have, nor doth this defendant claim, any right, title or interest, of, in or to the premises in question, or of, in, or to any part or parcel thereof; and this defendant doth disclaim all right and title of, in or to the same, or of, in or to any part thereof, with the appurtenances; and this defendant doth deny all unlawful combination and confederacy in the bill charged; without that, that any other matter or thing, &c. all which matters and things this defendant is ready to aver, &c.

J. H.

The further Answer of A. B. Defendant, &c.

A further
answer on
exceptions
taken.

The said defendant, for further satisfaction of this honourable court, and for answer unto the several exceptions taken by the complainant to his former answer, doth answer and say, as he is advised, that his former answer by him put in to the said complainant's bill, is sufficient to all the material charges thereof, or therein contained; nevertheless this defendant, for a further answer thereunto, doth say, that he did

did not know, hear, or was informed, until some few days before the death of — &c. that the deeds or conveyances to, &c. were executed by, &c. and this defendant further saith, that he doth not know, nor hath heard or been informed, that the said, &c. but this defendant confesseth he was informed that, &c. but the precise time when he was so informed, or by whom, this defendant doth not remember: and this defendant further saith, and denieth he had any private or other intimations from any person whatsoever, how the said purchase proceeded, or what likelihood there was of accommodating any disputes relating thereunto, until &c. and he also saith, that after, &c. he this defendant did, &c. but this defendant doth deny that, &c. (*and so deny whatever is excepted to as omitted in the former answer;*) without that, that, &c.

E. H.

CASES of PRACTICE.

The defendant may without notice move to amend his answer in a small matter; if the amendment is in a material point, he must give notice, which the court will sometime grant, especially on an *affidavit* that the defendant was surprised into such answer. 1 *Chan. Cases* 29.

On a motion made by the defendant's counsel for leave to amend an answer in *three* particulars, wherein the defendant alledged he had found the plaintiff mistaken, the court ordered it accordingly; and observed, that it was frequently done where issue is not joined. *Bunb.* 186. *pl.* 263.

There are no fixed and established rules as to amending answers, it is a matter entirely in the breast of the court, and at their discretion. *Barward. Rep.* 37.

L

If

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If the defendant puts in a demurrer and answer to the plaintiff's bill, no proceedings can be had on such answer till the demurrer has been argued. *Vezey, vol. 1. page 248.*

A person in his answer is not obliged to answer any question stated in the plaintiff's bill, which, if answered, may subject him to a penalty. *Ibid.*

An answer may be amended, even after the defendant has been prosecuted for perjury, for what he has sworn in such answer, if the charge appears plainly to the court to be a mistake. *Ibid.*

Where in a joint and several answer, put in by *A.* and *B.* if *A.* for himself answers, and *B.* says in his answer he has perused the answer of *A.* and believes it to be true; if *B.* be charged in the bill with nothing of his own knowledge, such a relative answer to the plaintiff's bill has been deemed sufficient; but it would have been otherwise, if the defendants had answered severally. *Anon.*

An executor, when a defendant on a bill brought touching a debt due from his testator to the plaintiff, must answer as to a discovery of assets, though he denies the debt. *Hard. 188.*

The joint and several answer of two defendants was, on motion, set aside for irregularity, because the *jurat* was "sworn only." *Moseley 238. pl. 130.*

In a second answer, the defendant must answer the exceptions taken by the plaintiff to his first answer. 1 *Chan. Cases* 60.

A defendant is in some cases bound down to abide by his answer, but it is otherwise where a person to a sequestration owned he had satisfied a debt. 1 *Chan. Cases* 154.

To plead to such part of the plaintiff's bill as is not answered, is a bad form of pleading, because

because it puts the court to the trouble of seeing what is, and what is not answered, and deprives the plaintiff of the benefit of taking exceptions to the defendant's answer. *Moseley* 40. *pl.* 22.

The defendant may *charge* and *discharge* himself by his answer. *2 Vern.* 194.

If the defendant has in his answer omitted the *general traverse*, yet if he has fully answered the plaintiff's bill, such answer has been deemed good. *2 Will. Rep.* 87.

When a husband and wife are defendants, and the husband by his answer prejudices the wife's interest, who is executrix; the wife may on motion procure leave to answer the matter separately. *Equity Cases Abr. vol. 2. p.* 66.

If a defendant insists on the *statute of limitation*, by way of answer, he shall at the hearing of the cause have the same benefit thereof as if he had pleaded it. *Wm. Pr. Wms. vol. 2. p.* 145.

The defendant's answer being reported not scandalous nor impertinent; if the plaintiff excepts to such report, he must shew specially to the court, wherein such answer is scandalous and impertinent. *Ibid.* 181.

After the defendant has answered the plaintiff's bill, he cannot refer such bill for scandal. *Ibid.* 311.

It was a rule in this court, that the answer over-rules the plea, where the defendant answers to the same thing he insists on by his plea, for he ought not to aver it. *4 Vin. Abr.* 442. *pl.* 1.

On a bill filed against three persons for a joint demand, and one of the defendants by his answer, says, he believes and hopes to prove the defendant paid, and the cause is heard on bill and answer; as to such defendant, the plaintiff can have no decree; for though the de-

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defendant does not directly swear what the amount of the debt is that is paid, yet his answer must be taken to be true, because the plaintiff by not replying to his answer has prevented him of the benefit of his proof; but the plaintiff may, on payment of costs, reply to the answer of the other defendants. 1 *Vern.* 140.

The court cannot make a decree against a person's answer, on the proof of one witness. *Chan. Cases, vol. 3. p. 123.*

If a person gives a general answer, and a particular question is answered by the plaintiff's bill which the defendant has answered in such general answer, yet he must notwithstanding answer such question particularly. *Ibid.*

A defendant is subject to a penalty to be inflicted by the court, for putting in a scandalous answer. *Chan. Rep. vol. 2. p. 386.*

An answer put in by a defendant in this court, may be given in evidence against him at common law. 1 *Vent.* 212.

Adjudged by King C. That the answer of a married woman in this court was equal in point of effect to a fine passed by her at common law. *Moseley* 248.

Answers cannot be amended after issue joined, but under some very particular circumstances to be shewn to the court, to induce them so to do. *Anon.*

An executor in his answer must either admit thereby assets sufficient to answer the plaintiff's demand, or must by his answer particularly set forth the assets he is possessed of. *Ayl.* 547.

On a bill filed against a husband by the wife's trustees to establish an agreement made for her separate maintenance, he is not obliged by his answer to discover any act of ill usage to his wife that may make against him. 1 *Vern.* 204.

If

If a person be named a defendant in a bill, among other material defendants who no ways pretend any right to the matters in question, and he thereon by his answer disclaim the charge therein alledged against him, he may after such disclaimer, on petition or motion for that purpose, be examined as a witness in the cause; for the court will presume his name was inserted in the bill for no other cause than only to take away his testimony. *Anon.*

Where a defendant disclaims generally all the matters in the plaintiff's bill, the plaintiff is not to reply; if he does, and serves the defendant with a *subpœna* to rejoin, the defendant shall have costs to be taxed against the plaintiff for such vexation. *Ibid.*

If the defendant disclaims to part of the plaintiff's bill, and puts in an answer to the other part, in such case the plaintiff may reply to that part of the defendant's answer that contains his answer to the plaintiff's bill. *Vide Wm. Pr. Wms. vol. 1. p. 523.*

Where the general traverse to the plaintiff's bill is omitted at the end of the defendant's answer, such answer is good, and not to be suppressed as improper. *Ibid. vol. 2. p. 87.*

On a bill brought by the next of kin of the testator, against an executor, for an account of the surplus, the executor answered, and waved the benefit of the surplus by mistake of the law in that point, and though he afterwards answered it to be testator's intent that he should have the surplus, yet he refused to amend his answer. *Ibid. vol. 1. p. 300.*

Regularly, the answer of a *feme covert*, if separate, ought to have an order to warrant it; but if the *feme covert*'s separate answer is put in without an order, and the same is a fair honest answer, and deliberately put in with the consent of the husband, and the plaintiff accepts of it, and replies, the court

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will not, on the motion of the wife or her executors, set it aside. *Vide Wm. Pr. Wms. vol. 2. p. 371.*

A *feme covert* cannot bind herself by her answer, much less her husband, as to her inheritance. *Ibid. p. 451.*

On a decree against an infant, unless cause shewn to the contrary, within *six months* after he comes to age the infant may answer anew. *Ibid. p. 401.*

If a copyholder in *fee*, by will charges his lands with his debts, the lands being in *England*, and the heir an infant in *Scotland*, and the creditors bring a bill to have their debts paid out of the copyhold premises, whereon the heir appears, and there is an attachment for want of an answer; but the heir being an infant, the next step is to bring up the body; and the heir being in *Scotland*, and out of the reach of the process of the court, the plaintiff cannot bring up the body; the infant shall answer by a certain time, or shew cause why executors should not be appointed. *Wm. Pr. Wms. vol. 2. p. 409.*

An answer may be amended after hearing and a decree; on an affidavit of the solicitor and his clerk, that the mistake was in ingrossing the answer from the draught, and the draught produced. *Ibid. p. 427.*

On time given to answer, the defendant may put in a plea, for that is an answer, and on oath, but cannot put in a demurrer. *Ibid. p. 464.*

If the time is given for a defendant to answer, though after *sequestration*, and though the answer is reported insufficient, yet the bill shall not be taken *pro confesso*. *Ibid. p. 556.*

A defendant cannot *demur* and answer to the same part of the bill, for the answer over-rules the

the demurrer. *Vide Wm. Pr. Wms. vol. 3. p. 80.*

Where the plaintiff sues both at common law and in equity for the same thing, he will be put to make his election in which court he will proceed, but need not however make such election, till the defendant has answered. *Ibid. p. 90.*

If a married woman appeals and prays time to answer separate from her husband, who lives abroad, and she has an order for that purpose, the court will not afterwards set it aside. *Vide Vezey, vol. 1. p. 384.*

In what particular cases the defendant's answer in one cause may be read in another. *Ibid. p. 388.*

T. A. defendant being in custody for want of his further answer, and afterwards puts in the same, he may on motion be discharged, on paying of the costs of his contempt. *Ibid. p. 110.*

On an insufficient further answer, process of contempt is to be continued from where it was before dropped. *Ibid.*

No one is bound to answer, so as to subject himself to punishment. *Ibid. p. 245.*

The defendant, without excepting to the first report of insufficiency, is not absolutely precluded from insisting on the same matter in a second answer. *Ibid. p. 491.*

The defendant is not compelled to answer, so as to subject himself to ecclesiastical penalties. *Ibid. p. 493.*

A person who through great age was deprived of his memory, and become almost *non compos mentis*, was admitted to answer by his guardian, in regard the matter in question was but of small value; but had the matter been considerable, the regular way would have been to have taken out a commission of lunacy, and have

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gotten a committee assigned him. *Vide Wm. Pr. Wms. vol. 3. p. 111.*

An infant's answer cannot be given in evidence against him, because it is not the answer of the infant, but of the guardian, who only is sworn, and not the infant. *Ibid. p. 237.*

Where a defendant puts in an answer to a bill brought by an infant, who did not reply to it, in such case the answer was taken to be true; in regard the defendant, for want of application, was deprived of an opportunity in examining witnesses to prove his answer, that he ought not to suffer for such omission in the plaintiff. *Ibid. p. 237.*

The defendant pleaded to the whole bill; and on arguing the plea, it was ordered to stand for an answer, without saying one way or other, whether the plaintiff might except; the plaintiff was not allowed to except, for that by an answer was meant a sufficient answer. *Ibid. p. 239.*

One reason, among others, why the answer of one defendant cannot be made use of against another defendant, is, that if such practice was allowed, a plaintiff might make a friend co-defendant, who might put in an answer in the plaintiff's favour, and the other defendants could have no opportunity of cross-examining him thereto. *Vide Wm. Pr. Wms. vol. 3. p. 311.*

Where an aggregate body are defendants, they are not liable to prosecution for perjury, though their answer be never so false. *Ibid. p. 310.*

A defendant is not bound to answer what tends to accuse himself of maintenance, or of bringing pretended rights, *stat. 32 H. 8. c. 9. Ibid. 375.*

A defendant, if asked by the plaintiff's bill, must answer whether he has a legitimate son; but

but not whether he is married or no, or whether he is an alien. *Vide Vexey, vol. 2. p. 493.*

The rule of discovery in this court by answer (unless subjecting the party to a penalty) does not depend on the rule at law. *Ibid. p. 621.*

After a decree *nisi*, against an infant, on his coming of age, and before the decree is made absolute, he may put in a new answer. *Vide Wm. Pr. Wms. vol. 1. p. 504.*

A. while beyond sea, sues *B.* at law, *B.* brings his bill against *A.* the court will order that service on *A.*'s attorney shall be deemed good services, but not that such attorney shall put in an answer without oath. *Ibid. p. 523.*

The defendant may plead and demur at the same time to the plaintiff's bill, and on the same point in the bill, for if the demurrer be over-ruled, the defendant must answer the bill, and cannot have the benefit of his plea, for the court, of course, on the demurrer being over-ruled, order that the defendant shall confess and answer the plaintiff's bill. *Gilb. Chan. Pract. p. 64.*

A person against whom a bill in this court is filed, if he answers all the allegations of the bill, he cannot afterwards demur to the relief; because, by answering the allegations, he has put the same in judgment, and each fact in the bill is confessed by his answer; and the relief, which is but a consequence of these facts, cannot be demurred to, but must be determined at the hearing of the cause. *Ibid. p. 63.*

EXCEPTING to ANSWER.

Exceptions to answer, are the allegations of the plaintiff to the defendant's answer, alledging, that a part or the whole thereof is insufficient, or not perfectly answered in some cer-

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tain point or points, particularly expressed or set forth in such exceptions.

If the defendant's answer be good to a common intent, the plaintiff must reply, and prove the matter of the bill to be true, if he can, and not insist on the insufficiency of the answer, this is meant of things transacted publicly, whereof there may be a general cognizance, for of matters done by the defendant privately, or resting in his own knowledge only, he ought to answer particularly and with certainty.

These exceptions may be drawn by yourself, as well as the bill and answer; if there is any thing nice in the points excepted to, it is most prudent to let a counsel draw the exceptions, as they must be perused and signed by counsel before they can be filed.

The practice in filing exceptions to an insufficient answer, is to deliver your exceptions engrossed and signed on unstamped paper or parchment to the defendant's clerk in court, or his clerk or agent, at his seat in the *six clerks office*, first marking such exceptions at the top of the engrossment, with the day of the month and year when delivered; and this is termed filing exceptions.

When exceptions may be filed to the defendant's answer.

If the defendant's answer is filed in *term*, the plaintiff must except against the defendant's answer the same term, or in *eight days* after. If the defendant's answer is filed in *vacation*, the plaintiff has *eight days* in the next term to file his exceptions. If the plaintiff does not file his exceptions in time, the plaintiff must by motion or petition, obtain an order of court for leave to file his exceptions; which is a matter of course, unless *two terms* have elapsed since the coming in of the defendant's answer, and then the court will not indulge the plaintiff with leave to file exceptions to the defendant's answer, but for some extraordinary reason specially

cially shewn to the court by motion, as where there has been an accommodation of the matter in agitation, &c.

The defendant has *eight days* after the plaintiff has filed his exceptions to make his election, whether he will submit to answer the exceptions or not; if in a town cause, the defendant has *eight days* after the *eight days* allowed him by the court to consider whether he will submit to answer the exceptions, or argue the same; if in a country cause, and he submits to answer, he must take out a *de. po.* for the taking of the same, in the same manner as directed in taking the first answer, and he has till the first return of the subsequent term for the doing thereof.

What time the defendant has to submit or argue the exceptions.

The plaintiff may deliver the defendant's clerk in court exceptions to the answer immediately, on the same coming in; or otherwise, if an injunction cause, the defendant might move to dissolve the injunction prayed by this bill.

After *eight days* allowed the defendant to submit or argue the exceptions, the plaintiff may move the court to have exceptions referred to a master. If it is an amicable cause, the usual way is to call on the defendant's clerk in court, to know what the defendant intends to do; whether to submit or argue. If he puts in a further answer, the same must be drawn, settled, and signed by counsel, and ingrossed, and put in, in the same manner as the first answer to the plaintiff's bill. This submission to answer the exceptions filed by the plaintiff to the defendant's answer, subjects the defendant to the payment of 20*s.* costs to the plaintiff.

If the defendant will not submit to answer the plaintiff's exceptions, the plaintiff must by motion or petition to the court, procure leave by order, to have his exceptions referred to a master. This is a procedure of course; and on

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the order being drawn up, entered, and served on the defendant's clerk in court, make a fair copy of the exceptions, and leave the same with the master's clerk, to whom the exceptions are referred by the order of court.

How to proceed on the exceptions being referred to the master.

The plaintiff's solicitor must apply to the master's clerk, and take out *one, two, three*, or more warrants to proceed on the exceptions for each warrant he must pay the master's clerk 2 s. and then make a copy of such warrant, and serve the same on the defendant's clerk in court at his seat in the *six clerks office*. It is usual on the *third warrant*, on oath being made by the party who served the *three warrants* in manner aforesaid, for the master to proceed on the referred exception *ex parte*, this is when the defendant's solicitor does not attend.

How the warrants are underwrote.

1st Warrant, *The plaintiff has left exceptions to the defendant's answer.*

2d, *To proceed on the exceptions to the defendant's answer.*

3d, *The plaintiff has left his bill of costs.*

4th, *To proceed on the plaintiff's bill of costs.*

5th, *To inspect.*

This step is taken, that the solicitors on both sides having previous information of the matter on which they attend, may come prepared to proceed thereon, by taking office-copies of such proceedings left at the master's, and to consider how to answer the same.

Master's report on exceptions to answer referred.

If on the reference the master reports the answer to be insufficient, the plaintiff procures the master's report, signed by him, for which he pays the master's clerk 15 s. which done, he must file such report, at the Report-office in *Symond's-Inn, Chancery-Lane*, four days after signing,

signing, (those reports were frequently signed after the *four days*) and thereon (as reports made by the master before hearing require no confirmation) the plaintiff's solicitor may take out *two subpoena's*, viz. one returnable immediately for the defendant to make a better answer, which *subpoena* is to be served on his clerk in court, and the other *subpoena* is for costs, which costs on the master's report of an insufficient answer, is 40 s. if the answer is put in, in town, and 50 s. if taken by commission in the country. If it is an injunction-cause, it is more adviseable for the plaintiff's solicitor not to serve the defendant's solicitor with the *subpoena* for costs, because he may insist that the defendants shall not move to dissolve the injunction till the costs on the master's report are paid.

The plaintiff or defendant may take excep- Exceptions
tions to the master's report; these exceptions to the mas-
must be argued in court, and are not only to ter's report.
be signed by counsel, but are to be ingrossed on treble fixpenny stamped paper or parchment, and filed with the principal register, and the party excepting is to deposit with such register 5 l. (if it be a general report) which sum is to be paid to the plaintiff, if the exceptions are over-ruled; but if the exceptions are found good, the said 5 l. is usually paid back, though this is entirely discretionary in the court.

Note; On filing exceptions to the master's report, either party may by motion or petition procure an order for setting down the exceptions for argument.

If the defendant submits to put in a further answer, or if the master reports the defendant's answer insufficient, and he then puts in a second insufficient answer, no new exceptions can be filed to such *second* answer; but the plaintiff must by motion of court or petition, obtain an
order

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order to have the answer referred to the master, to see if the defendants *second* answer is insufficient in all the points excepted to. If on this reference the master reports the answer insufficient, the defendant must put in a *third* answer, unless he excepts to the master's report as before directed. On the defendant's *second* answer being reported insufficient, the defendant must pay 3 *l.* costs ; for a *third* insufficient answer 4 *l.* costs ; for a *fourth* insufficient answer 5 *l.* costs. The plaintiff may, on the defendant's putting in a *fourth* insufficient answer, by motion of court (which is a matter of course) obtain an order that the defendant may stand committed.

Note ; No exceptions can be taken to answer, after a replication has been filed, for it is then admitted to be good ; unless you obtain an order to withdraw the replication, or prefer exceptions, which is on payment of 20*s.* costs.

DIRECTIONS for drawing EXCEPTIONS.

If the plaintiff's solicitor chuses to draw the exceptions to the defendant's answer himself (though it is unnecessary, as they must, at all events, be perused and signed by counsel) he must make an abstract of the bill and answer ; and when the matter is reduced into a narrow compass, the draughtsman may easily discover such parts of the charge and interrogatories in the plaintiff's bill as are not answered, or if answered, were evasive, so as to avoid the equity of the plaintiff's bill. But as example is more instructive than precept, we will, by way of illustration, suppose the plaintiff files a bill to set aside a fraudulent will set up by J. T. the defendant, and to have a particular

Particular account of the estate of *A. B. &c.* deceased, the plaintiff being entitled to the same, as the nearest relation of the whole blood, and heir at law to *A. B.* To which bill the defendant puts in an evasive and imperfect answer, *viz.* in not giving any particular account of the estate of the said *A. B.* as is prayed by the plaintiff's bill; but instead thereof insisting on a pretended title to the same, by virtue of a will pretended to be made by the said *A. B.* in his life time; which will, if any such there be, the plaintiff in his bill avers, and which he is ready to maintain and prove, is surreptitiously obtained, illegally executed, and unduly proved, with an intent to defraud the said plaintiff of the said *A. B.*'s estate; for which reasons the plaintiff excepts against the said defendant's answer, as insufficient in the several points set forth in the exceptions thereto:

In Chancery. Between *A. A.* plaintiff.
and
J. T. defendant.

The form of exceptions to an answer to a bill, filed to set aside a fraudulent will, set up by the defendant against the plaintiff, as heir at law of the testator.

EXCEPTIONS taken and filed in this honourable court, by the said complainant to the insufficiency of the answer of the said defendant, put in to the said complainant's said bill of complaint.

First exception, The plaintiff excepts against the said answer, as insufficient; for that said defendant, by his answer, pretends himself to be a relation to the said *A. B.* but does not set forth his pedigree, nor make out how near of blood

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blood or related he was to the said *A. B.* all which he ought to have done.

Second exception, The plaintiff likewise excepts against the said defendant's answer, as insufficient; for that he the said defendant does not therein set forth whether the said *A. B.* did not make his last will and testament in writing, and the plaintiff executor thereof; and whether she did not give, &c. (*as stated in the bill*) all which he ought to have done, the same being required by the plaintiff's bill.

Third exception, The plaintiff excepts against the said defendant's answer, as insufficient; for that the said defendant did not therein set forth, how he procured and obtained the said will to be executed by the said *A. B.* and who were the advisers therein; all which he ought to have done, it being required by the plaintiff's bill.

Fourth exception, The plaintiff also excepts against the defendant's answer, as insufficient; for that he the said defendant doth not in his answer therein set forth what gold, silver, plate, jewels, bills, bonds, &c. and household goods, the said *A. B.* died possessed of, with the true value of the same, and annex a schedule of the particulars thereof to his answer; which he ought to have done, the same being also prayed by the plaintiff's bill.

FOR all these reasons, the plaintiff excepts against the said defendant's answer, as imperfect, evasive, and insufficient in the particulars aforesaid, and therefore prays that the said defendant may amend his answer as to the same, and give in a full, perfect, and sufficient answer to the complainants said bill of complaint.

J. M.

CASES

CASES of PRACTICE.

Care must be taken in drawing exceptions, that no mistake happen therein; for no exceptions can be afterwards added. *Bunb. Rep.* 246. *Pl.* 317.

On a bill filed against him, if the defendant answers as to matter of discovery, and pleads only as to the relief of the bill, the plaintiff may except to any matter of discovery, before the plea argued; for that plainly no matter of discovery is covered by the plea. *Vide Wm. Peere Wms. vol. 3. page 327.*

If the plaintiff excepts to the defendant's answer, and the exceptions are referred, and the master certifies the answer insufficient in the points excepted to, and then the defendants fully answer the charges of the bill; and if it happen that the exceptions exceeded the charges of the bill, and the master on a second reference of the answer reports that insufficient likewise in the points excepted to, and the defendants except to the master's report, and insist that they had answered well, having answered all the matters of the plaintiff's bill, yet they are also to answer all the matters of the exceptions, as well as of the bill; they not having excepted to the first report. *Chancery Cases, page 60.*

Exceptions may be taken to an answer, on submission, by order of court. *Chancery Cases, 186. Bern. 470.*

Three defendants put in joint and several answers, which are reported insufficient; two of them wave exceptions, the other insists on having his argued, which the court allowed. *Ayl. page 46.*

If the defendant answers to a bill, as to matters of discovery, and pleads only as to relief,
the

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the plaintiff may except to any matter of discovery before plea argued. *3 Will. Rep. page 327.*

Held, that when the court orders that a plea shall stand for an answer, without saying more, it must be intended a sufficient answer; an insufficient answer being as no answer: wherefore, this being taken to be a sufficient answer, and no express liberty to except, the order that was made to refer the exceptions, and the exceptions themselves, were discharged by the court. *3 Will. Rep. p. 240. Moseley, p. 74.*

The exceptions must shew some particular point or points wherein the answer is defective; for if insufficiency be surmised only in general, the court will not refer the answer to a master.

Anon.

If an answer be good to a common intent, the plaintiff must reply, and prove the matter of his bill, and not insist on the insufficiency of the answer. *Anon.*

In general, exceptions cannot be taken to the defendant's answer after a replication put in; for the plaintiff, by his replication, has admitted the answer to be sufficient; yet in some particular cases, the court has ordered the replication to be taken off the file, and has permitted the plaintiff to file exceptions to the defendant's answer. *Anon.*

On an answer's being reported not scandalous or impertinent, if the plaintiff excepts to the master's report, he must shew specially wherein such answer is scandalous or impertinent. *Vide Wm. Pr. Wms. vol. 2. p. 181.*

Where a bill or answer is referred for scandal, and reported to be scandalous, if the master has once expunged this scandal, the party cannot except; as it will not appear on record what that scandal was, and it was the party's own fault, that he did not sooner except to the report. *Vide Wm. Pr. Wms. vol. 2. p. 182.*

In

In a matter referred to the master, the party has liberty to take exceptions to the master's report; but the objections must be made before the master, as a foundation for such exceptions. *Ex parte Bax. Vide Vezey, vol. 2. p. 398.*

If a demurrer be to part of a bill, and an insufficient answer to the remainder, the plaintiff cannot except to the answer, till the demurrer is argued. *Vide Wm. Pr. Wms. vol. 2. p. 326. Vezey, vol. 1. p. 248.*

When a plea is ordered to stand for an answer, it must be intended a sufficient answer; so that the plaintiff cannot except to it. *Vide Wm. Pr. Wms. vol. 3. p. 239.*

Of PLEAS and DEMURRERS.

P L E A S.

A plea is some special matter, pleaded by the defendant to the plaintiff's bill, and is an answer thereto, or to some part thereof, therein relying on one or more things, as a cause why the suit should be either *dismissed, delayed, or barred.*

Pleas in this court are of three kinds, *viz.* a plea to the jurisdiction of the court, a plea to the person of the plaintiff, and a plea in bar. The plea in bar, as it goes to the merits of the cause, the court oftentimes, on arguing the same, orders it to stand for an answer. These pleas are various, as acts of parliament, fines or recoveries, former decrees, purchasing without notice, &c. If the plea in bar be allowed by the court, yet the plaintiff may reply to the truth thereof, and put the defendant to the proof of his plea. Pleas in bar of matters *in pais*, are to be put in on oath; and except the matter of the bar be single, and so a full bar,
that

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that the matter requires no further answer, the whole is generally set forth by way of answer. In that case, so much of it as goes in bar being relied on by way of answer, it is entitled, *The plea and answer of the defendant to the plaintiff's bill.*

It seems necessary here to give the young solicitor a general idea of these pleas, which we shall do as follows:

P L E A S, of perpetual or temporary B A R.

Pleas to the jurisdiction of the court.

In these pleas you must shew that the court has no cognizance of the matter in dispute between the parties; if this plea is over-ruled, or found insufficient, the defendant cannot again plead to the jurisdiction of the court, but must put in a full answer to the plaintiff's bill.

Pleas to the person of the plaintiff.

In these pleas must be shewn, that the plaintiff is by law incapable to sue; for example, that he is outlawed, or excommunicated, which begets a temporary disability in the plaintiff; if the plea is, that the plaintiff is *attainted*, or is a *popish convict*, it is a perpetual disability.

Plea of outlawry.

Is only of force till the outlawry is reversed, but suspends the suit in the mean time; after it is reversed, the plaintiff may, on payment of 20s. costs, sue out a new *subpœna*, and serve the same on the defendant, in order to compel him to answer his bill; the record of the outlawry, or the writ of *capias* issued thereupon, must be pleaded *sub pede sigilli*; and the most usual way is to annex it to the plea when put in. If the outlawry pleaded be in a suit for that very duty or thing for which relief is sought by the plaintiff's bill, the same will of course be disallowed, and the plaintiff may sue out two *subpœnas* against the defendant, one for costs, and the other to make a better answer to his bill. A plea of outlawry, though considered

sidered insufficient, may be set down with the register for the judgment of the court; but if within *four days* after the said plea is filed by the defendant, the plaintiff does not enter it with the register for a hearing, the defendant may take out a *subpœna* for costs against the plaintiff as if the plea had been argued.

When this plea is pleaded by the defendant, it must be certified by the ordinary; after such plea pleaded, the plaintiff, on producing letters of absolution in court, will be allowed to proceed in his suit. Plea of ex-communication.

If a *feme sole* plaintiff marries after answer put it, and pending the suit, on the same being shewn to the court, the suit shall abate, but may be revived by bill of revivor: though the marriage of a *feme* plaintiff works an abatement, it is otherwise with a *feme* defendant; because it is not reasonable she should take advantage of her own act. The death of any of the parties causes the suit to abate. Plea in abatement.

Are some matter shewed to the plaintiff's suit, whereby admitting the plaintiff's bill, &c. to be true, yet the suit or bill, or some part thereof, is *barred*. Plea in bar.

If the defendant does not enter his plea within *four days* after the same is filed, it will be over-ruled of course, and the plaintiff may take out two *subpœnas*, viz. one for an answer, and the other for costs. This is, as to a plea of matter *in pais*, and not of record; because it is the plaintiff's duty to enter these, or the defendant may, within *four days* after filing such plea, have a *subpœna* for costs. If a matter which is not of record be pleaded, and the plaintiff chuses to have the opinion of the court thereon; who, allowing it to be true, it is a sufficient bar; the same must be entered and argued: or if it be held sufficient, and the plaintiff takes issue thereon, the defendant must proceed. When pleas are to be entered and argued.

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ceed to prove the truth of his plea by depositions, &c. as an answer. If the defendant's plea is over-ruled through any neglect of his, or his agents, the court, on motion or petition, will order the same to be argued, the defendant first paying the costs for over-ruling the same, being 5*l.* if on such argument the plea is held good, the bill is dismissed with costs against the plaintiff; on the contrary, the defendant pays costs.

When a plea is ordered to stand for an answer, (which is sometimes the case, on argument) costs are seldom given on either side, and the benefit of the matter pleaded is generally saved to the hearing.

Note, The solicitor or clerk in court, on putting in the defendant's plea, ought to be careful in the caption thereof; for if on a commission to take the same, the commissioners return, *This answer was taken*, without the words, *The answer and plea of the defendant was duly taken, and the defendant was sworn thereto on his corporal oath on the holy evangelists, &c.* the plea will be rejected; because it does not appear that the party was ever sworn to the plea; but the court oftentimes indulges the party to amend the caption, looking on it rather as a mistake of the commissioners, than a fault of the defendant. 2 *Chan. Cases* 208.

Introduction to a plea.

THE defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby alledged for plea unto the said bill, says, That, &c.

Conclusion to a plea.

ALL which matters this defendant doth aver and plead in bar of the complainant's said bill, and of the complainant's pretended demands, for which

which he seeks relief; and this defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf wrongfully sustained.

AND therefore this defendant doth plead the Or thus, *said (act of parliament, release, or, &c) in bar to the said complainant's bill; and humbly demands judgment of this honourable court, whether he shall be put to make further answer thereunto; and pray to be hence dismissed, &c.*

PRECEDENTS of PLEAS.

The plea of C. D. gent. defendant, A plea to
to the bill of complaint of A. B. the jurisdic-
complainant. tion of the
court.

The said defendant, by protestation, not confessing or acknowledging any of the matters or things in and by the said bill of complaint set forth and alledged to be true, saving that the tenements and lands, with their appurtenances, mentioned in the said bill, concerning the title whereof the said bill is exhibited into this honourable court, are situate, and do lie in, &c. in the said county of C. and for plea thereunto saith, that the said county of C. as this defendant is informed, is and has been time out of memory of any man to the contrary, a *county palatine*; and that as well the said messuage and premisses, as all other lands within the said *county palatine*, or belonging thereunto: And all actions and suits at common law, or in equity, by reason of the premisses, or any part thereof, have been, or ought to have been by all the said time impleaded, and yet are impleadable in the courts of the said *county palatine*, before the judges for the time being within the said *county palatine*,
and

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not elsewhere; and therefore humbly demands the judgment of this honourable court, if this court will hold plea thereupon, and enforce the defendant to answer the said bill, exhibited for the cause aforesaid, wherein the said defendant does submit to the order of this honourable court.

J. M.

Plea of a
former suit
depending.

This defendant, by protestation, &c. for plea saith, That the said complainants, in, &c. term, which was in the year, &c. did exhibit their bill into this honourable court against this defendant, and one, &c. to have an account of the monies raised by the sale of, &c. in the complainant's now bill mentioned, and claiming such shares and proportions thereof, and such rights and interests therein, as by their present bill they do now claim, And praying relief as to this defendant, in the same manner, and for the same matters, and to the same effect, as they do now by their bill; to which said first bill this defendant and the said, &c. did put in their answer, and the said complainants thereunto replied; and witnesses were examined on both sides, and their depositions duly published, and the said former bill is still depending in this honourable court, and the said cause is yet undetermined; and therefore this defendant does plead the said former bill, answer and proceedings, in bar to the said complainants now bill, and humbly demands the judgment of this honourable court, whether he shall be put to make any further or other answer thereunto; and prays to be hence dismissed, with his costs and charges in this behalf wrongfully sustained.

J. S.

The

The said defendant, by protestation, &c. as to such part of the said bill as demands an account of and concerning any matters and things transacted between the complainant and this defendant, at any time before, and until, &c. this defendant does plead thereunto; and for plea saith, That after, &c. that is to say, upon the said day, &c. the complainant and this defendant did make up, state and settle an account in writing, then delivered to the complainant, of the said, &c. and of all matters and things thereunto relating, or at any time before the said, &c. being depending between the complainant and this defendant; and the complainant, after a strict and deliberate examination of the said account, and every particular thereof, did approve and allow of the said account, and actually receive all monies due on the balance of the said account; and thereupon the same day, &c. the complainant did give to this defendant a receipt or acquittance under his hand, which is in these words, (*viz.*) *Received this day of, &c. from C. D. the sum of, &c. being in full of all accounts to this day; I say, received by me A B.* (or the said complainant, by a receipt or acquittance, bearing date, &c. did acknowledge the receipt of the sum of, &c. from the defendant, in full of all accounts,) as in and by the said acquittance under the hand of the said complainant, and ready to be produced to this honourable court, may appear: And this defendant does plead the said account stated, the payment of the said monies, and the said receipt or acquittance, in bar to such part of the said bill as demands an account from this defendant for any matters or things in the bill mentioned, on or before the said, &c. and humbly demands the judgment of this honourable court, whether he shall make any other or further answer to that part of the complainant's

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plainant's said bill of complaint; and for answer to the residue of the said bill, this defendant saith, &c. and prays to be dismissed with costs, &c.

E. G.

Plea of the
statute of li-
mitations.

The said defendant, by protestation, &c. for plea thereunto saith, That by an act of parliament made at *Westminster*, in the county of *Middlesex*, in the one and twentieth year of king *James* the first, entitled, *An act for limitation of actions, and avoiding of suits at law*, it was thereby enacted, that all actions of debt, &c. should be commenced within six years after the cause of action accrued (*reciting that part of the act verbatim.*) And now, forasmuch as the scope of the complainant's bill is to have a debt of 10*l.* which, as he pretends, was due to him for, &c. in the bill mentioned; and that this defendant promised, &c. which said debt contracted, and promise made by this defendant to the complainant, being in the said year, &c. as by the said bill is alledged, appears by the complainant's own shewing to be more than seven years past since the said debt was contracted or promise made; and the same not relating to any merchant's accounts, their servants or factors, and no suit having been commenced for the same debt or promise by the said complainant against this defendant, within the time so limited and appointed by the said act for bringing the same; this defendant is by his counsel advised, that the said suit in this court, for the said debt and promise, is barred by the said act of parliament, and that the complainant ought not to be relieved for the same; and therefore this defendant does plead the said act of parliament, in bar to the said complainant's bill, and humbly prays the judgment

judgment of this honourable court, whether, &c.

J. D.

Note, These pleas are wrote on unstamped parchment, (same stamp as answer;) they are signed by counsel, and under his signature the defendant signs his name.

CASES of PRACTICE.

To plead to such part of the bill as is not answered, is a bad form of pleading; because it puts the court to the trouble of seeing what is, and what is not answered, and deprives the plaintiff of the benefit of taking exceptions to the defendant's answer. *Moseley*, 40. pl. 22.

If a plea in bar to the plaintiff's bill be allowed, yet the plaintiff may reply to the truth of such plea, and put the defendant on proving the same. *Gilb. Rep* 184.

The statute of limitations is no plea, where the bill charges a fraud; but then it should be charged by the bill, that the fraud was discovered within *six months* before the bill was filed. *3 Will. Rep.* 143.

A plea to the jurisdiction, or in disability of the person, must be on oath; and so must pleas of matters of record, and must be signed by counsel. *Anon.*

A plea of privilege must be put in on oath. *2 Vern. Cases*, 80.

An account stated is a good plea; but if there be an agreement to rectify mistakes, it shall not conclude, though under hand and seal. *2 Freem. Rep.* 183.

If the plaintiff replies to the defendant's plea, he thereby admits it to be good. *Anon.*

A release subsequent to a decree may be pleaded. *Gilb. Rep. in Equity*, 184.

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A defendant may plead the matter proper in bar, and then add, by way of answer, what further is necessary as to fraud, &c. charged in the bill. 2 Chan. Cases, 161.

A plea cannot be taken on a general commission to take an answer only. If the defendant obtains an order for a commission to *plead, answer, or demur*, he may take and return a plea and demurrer by such commission, or an answer and demurrer, or an answer only. *Anon.*

If the defendant is doubtful, whether if he pleads the matter of his defence, the plea will be allowed by the court; he may shew the whole matter by way of answer, and then insist and rely on it, almost in the same manner as if he had pleaded the same; only he must not call it his plea, nor can he have the benefit of the same till a hearing. *Anon.*

Where the plaintiff apprehends the defendant's plea to be good, though not true, he may reply to the plea, and take issue on it, and proceed to examine witnesses, as in case of an answer; in this case, where the plaintiff replies to the defendant's plea before it is argued, it is an admission of such plea, only the defendant is put to the proof thereof; and so he may when it is argued and allowed, and if he prove his plea, the bill must be dismissed on hearing.

If the plaintiff amends his bill before he argues the plea, it is an admission of the goodness of the plea, as if the same had been allowed on argument.

If the defendant puts in a plea, which on perusal the plaintiff's counsel apprehends will not hold good; then, when the defendant has entered it with the register, (which must be in *four days* after filing) and after an order is obtained for procuring the same to be set down to be argued before the chancellor, you may pre-
pare

pare your briefs of the bill and plea, and get your counsel ready for arguing.

If the defendant does not enter his plea within *four days* after filing, it is over-ruled of course, and the plaintiff, on proving the register's certificate that the plea is not entered, may take out a *subpœna* for costs, in the same manner as if he had over-ruled the defendant's plea on argument, and another *subpœna* against the defendant, to put in a better answer; and such plea cannot afterwards be admitted to be set down or argued without leave of the court, on motion.

All pleas in general ought to be entered with the register, *four days* after the same are put in by the defendant.

If the defendant does not petition to set down the plea to be argued, the plaintiff may petition, and obtain an order for that purpose.

When a plea of the pendency of a former bill depending for the same matter is referred to the master, if he reports that both bills are for the same matter, the plea shall be allowed, and the party is entitled to costs. *Barnard* 84.

This plea cannot be set down to be argued, for then there would be two dilatories; but it is absolutely over-ruled, and thereon the plaintiff takes out a *subpœna* for 5*l.* costs, in the same manner as if the plea was argued and over-ruled. *Ibid.*

On time given to answer, the defendant may put in a plea, for that is as an answer, and on oath. 3 *Will. Rep.* 80, 81.

The plaintiff or defendant may, on petition, set down the plea to be argued; and if the same is allowed, the plaintiff is to pay the defendant 5*l.* costs, which he must obtain by suing out a *subpœna* against the plaintiff for such costs; if, on the contrary, the plea is over-ruled, or ordered to stand for an answer, without liberty to

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except against such answer, then the defendant is to pay 5*l.* costs to the plaintiff.

A second plea for want of parties is not good ; but such plea cannot be suppressed on motion, but must be set down to be argued. *Moseley*, 207.

Outlawry is no good plea to a bill brought by an executor. *1 Vern.* 184.

A purchaser must plead that he had no notice. *Ibid.* 219.

In pleading the statute of frauds, it is necessary to say that the agreement was not reduced into writing. *Prec. in Chan.* 535.

The statute of limitations is no good plea, where the estate in law is in trustees. *2 Mod. Cases in Law and Equity*, 32.

If plaintiff in his bill entitles himself administrator, and defendant pleads that plaintiff is not an administrator, held a good plea in abatement, in equity as well as at law. *1 Vern.* 473.

A purchase under an outlawry pleaded and allowed. *Gilb. Chan. Pract.* 184.

A *parol* agreement is destroyed by a written one ; and the defendant need not answer, but plead the statute of frauds. *Anon.*

A plea of outlawry must be pleaded *sub pede sigilli* ; this plea continues in force only till the outlawry is reversed, but it suspends all proceedings in the mean time. When the outlawry is reversed, the plaintiff may, on paying the defendant 20*s.* costs, (if the plea is not argued) serve the defendant with a *subpœna* to answer his bill so delayed by the plea of outlawry. *Ord Chan* 98.

Excommunication in the plaintiff must be pleaded *sub pede sigilli*. *Anon.*

After a plea put in, there can be no motion for an injunction till such plea is argued. *Wm. Pr. Wms.* vol. 3. p. 396.

In a plea of purchase, it is a sufficient denial of notice, to say, that at the time of the purchase he had no notice, without saying, *or at any time before.* *Ibid.* p. 243.

In all cases where a plea of purchase or marriage-settlement is pleaded, notice must be denied, though not charged by the bill. It is sufficient to deny it either in the plea or answer; however, it is best to deny the notice in both. *Ibid.* p. 244.

A defendant cannot demur and plead to the same part of the plaintiff's bill; for the plea over-rules the demurrer. *Ibid.* p. 80.

The statute of limitations is no plea, where the plaintiff's bill charges a fraud; but then it should be charged by the bill, that the fraud was discovered within *six years* before the bill filed. *Ibid.* 143.

A plea of a release, other than in the plea is set forth; the substance will stand for an answer. *Vezey, vol. 2. p. 107.*

Pleas suggest a fact which is to be proved. *Ibid.* 247.

The court will not relieve on a matter purely of mispleading. *Wm. Pr. Wms. vol. 2. p. 70.*

If defendant, in his plea to plaintiff's bill, omits to deny notice, on which plaintiff replies to such plea; all that is necessary for defendant to do, is to prove the notice *Ibid. vol. 3. p. 94.*

A plea may be returned by a special commission. *Anon.*

DEMURRERS.

A demurrer is the allegation of the defendant, which, admitting the matters of fact, or some of them, alledged by the plaintiff's bill, to be true, shews that as they are set forth by the plaintiff himself, they are insufficient for him to proceed on, or to oblige the defendant to make

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answer unto; and therefore it demands the judgment of the court, whether the defendant shall be compelled to make answer to the plaintiff's bill, or to some particular part thereof.

Demurrers are of various kinds, *viz.* a man may demur for want of parties, or for want of equity in the plaintiff's bill, where by answering part, the defendant may so far accuse himself as to incur the penalty of a statute, forfeiture of an estate, and for many other causes, as the nature of the case requires.

Note: *By the rules of this court, every demurrer shall express the several causes of demurrer.*

The defendant should file his demurrer before the rule to answer the plaintiff's bill be out, and before he has obtained an order for time to answer; but after an order for time to answer *only* has been obtained, the defendant cannot demur, unless he obtains a special order of court for that purpose.

Introduction to a demurrer.

This defendant, by protestation, not confessing, &c. as the same are therein and thereby alledged, doth demur thereunto, and for cause of demurrer shews, That, &c.

Or thus.

Thereby alledged, says he is advised, That, &c.

Conclusion to a demurrer.

Wherefore this defendant doth demur in law to the complainant's said bill of complaint, and to all the matters and things therein contained; and humbly demands judgment of this honourable court, whether he shall be compelled to make any other answer thereunto; and humbly prays to be hence dismissed, &c.

Or thus.

Wherefore, and for divers other errors and imperfections in the said bill, this defendant doth demur in law thereto; and humbly demands, &c.

P R E C E -

PRECEDENTS of DEMURRERS.

The joint and several pleas, A plea, and demurrers, and answers of fwer, and *A. B.* and *A. A.* defendants, to the bill of complaint of *S. T.* complainant.

THE said defendants, by protestation, not confessing, &c. for plea to so much of the said bill as is to compel these defendants to set forth and discover their titles in and to lands, tenements, and hereditaments in the bill of complaint mentioned, or any part thereof, say, that the said complainant hath several times, within, &c. last past, affirmed to the defendant *C. D.* &c. and the said *C. D.* doth now affirm, that the said complainant hath sold and conveyed away unto, &c. all his estate, title, and interest, of, in and to the lands, tenements and hereditaments in his now bill of complaint mentioned; and the said, &c. hath also within the said time often affirmed to the defendant *C. D.* and several other persons, that he had bought and purchased of the now complainant all his estate, title, and interest in and to the said lands and premisses now in variance; and thereupon this defendant *C. D.* on behalf of himself and the other defendant *E. F.* did, &c. All which these defendants do aver, and are ready to prove, as this honourable court shall award; by reason whereof these defendants are advised, that the complainant having no title or interest in or to the said lands, tenements, and hereditaments, but having conveyed the same unto the said, &c. as aforesaid, they nor any of them are obliged or compellable, by the rules and practice of this honourable court, either to discover or set forth

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the particulars of their or any of their assurances, or the nature of them, or the manner of executing them, or to set forth their or any of their interests in or to the said lands and premisses, or any part thereof; and therefore pray the judgment of this honourable court, whether they shall make any further or other answer to the said bill of complaint in this particular. And these defendants further say, that by the complainant's own shewing, in and by his said bill of complaint, he was an infant under the age of twenty-one years at the time of his entering into articles of agreement, in the bill of complaint mentioned, with the said defendant C. D. and if so, the same is voidable in law, and ought not to be any ways binding or obliging to the complainant or his heirs; and therefore, and for divers other defects and imperfections in the said bill of complaint contained, these defendants do demur in law, and humbly demand the judgment of this honourable court, whether they or any of them shall be compellable to make any further or other answer in any particular, as herein after followeth: And for answer to such part of the said bill of complaint as is not pleaded or demurred unto, these defendants say, all of them, for and by themselves severally, that they deny all manner of confederacy or combination whatsoever, to defeat, defraud, or circumvent the said complainant, as in the said bill is pretended, or to any other end, intent or purpose whatsoever; and all these defendants severally deny, that they or any of them have, or hath, or ever had the said pretended deeds of settlement in the bill mentioned, or any or either of them, or any other deeds, writings, or evidence whatsoever, touching or concerning the said lands and premisses in the bill mentioned, or any part thereof, which do any ways tend to the making out or proof of
any

any title or interest of or for the complainant in and to the same, or any part thereof; nor do these defendants, or any of them, claim any interest or title in or to the said lands, &c. or any part thereof, by, from, or under the complainant; nor did these defendants, or any of them, from or under any title derived from the complainant, prosecute any action of trespass, &c. but the said, &c. And these defendants, C. D. and E. F. say, that they doubt not to prove to this honourable court, that the bill of complaint exhibited by the now complainant, is exhibited, and this suit is prosecuted, by and at the charge of the said, &c. and not the complainant, and that the complainant hath so acknowledged; and that the said, &c. hath causelessly and unnecessarily exhibited this bill in the now complainant's name, on purpose to vex and trouble these defendants, and to put them to unnecessary charges in the law; of which these defendants hope this honourable court will take due consideration, and regard the same in costs to these defendants. *Without that, that, &c.* E. H.

The demurrer of C. D. defendant, to the bill of complaint of A. B. complainant. A demurrer to a bill for want of parties.

THE said defendant, by protestation, &c. for and by way of demurrer thereunto, saith, that the complainant, in and by her said bill, endeavours to entitle herself to one messuage, &c. in the said bill called, &c. who was, &c. and prays to have an account of the rents and profits of the premises ever since the death of her said mother, and to have the deeds and writings discovered and brought into court, or deposited into other safe hands, for the benefit

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of the said complainant, and, *Ec.* her sister, *Ec.* in the bill called, *Ec.* the other daughter and coheir of the said, *Ec.* deceased; to which this defendant doth demur, and for cause of demurrer saith, that it appears of the plaintiff's own shewing, that the said, *Ec.* called in the said bill, *Ec.* is daughter and coheir with the complainant, (if any title she hath) and who is now living, and may hereafter call this defendant to an account, under the same pretences of title as the complainant now doth, whereby this defendant is like to be put into a double trouble, charge, and vexation, which might have been at once determined by this suit, in case the said, *Ec.* the complainant's sister, and coheir with her to the estate in question, had been a party complainant, or defendant to the said complainant's bill, as she ought to have been; wherefore, for that the complainant's said sister is not made a party to the said complainant's bill, and for divers alike errors and imperfections in the said bill appearing, this defendant doth demur in law thereunto, and humbly demands the judgment of this honourable court, whether he shall be enforced to make any other or further answer thereunto; and prays to be dismissed with his reasonable costs in his behalf, wrongfully sustained.

E. G.

A demurrer to a bill, for several causes.

THE said defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said complainant's bill of complaint to be true, in such manner as the same are therein and thereby set forth and alleged, saith he is advised by his counsel, that there is no matter or thing in the said bill of complaint contained, good and sufficient in the law, whereby to call this defendant in question in this honourable court for the same, but that there is good cause of demurrer thereto; for that

that it appears by the plaintiff's own shewing, in and by his said bill, that the scope and end thereof is for the complainant (as being administratrix of the goods and chattels of, &c. deceased) touching a lease or term of twenty-one years, of a messuage, &c. in the bill mentioned, supposed to be demised by, &c. deceased, for such term as aforesaid, and to charge the lands with, &c. and interest, alledged to have been the consideration paid for the said term, or to be answered out of the lands and the profits thereof for twenty-one years as aforesaid. To which said several matters, and all the other things in the said bill contained, this defendant doth demur; and for cause of demurrer sheweth, that it appears of the complainant's own shewing, that the said term or lease, touching which he seeks relief, expired in or about the year, &c. and therefore, inasmuch as the land was not, nor is not any ways chargeable with, or liable unto the plaintiff's demand, either in law or equity, after the expiration of the said lease; nor is the defendant, for aught appears by the bill, any ways answerable or accountable in equity, for any profit of the premises taken during the said term of twenty-one years; and it is reasonable to presume, that the said lease was surrendered or delivered up to the executors of the said, &c. it appearing of the complainant's own shewing, that the same long since came to the hands of, &c. in the bill named, who then claimed to have an estate and interest in the said lands and premises, and entered upon and took the profits thereof; and forasmuch as a demand of this nature, especially after so great a length of time, ought not to be countenanced in this honourable court, and the said bill containing in it no equity against the defendant; therefore this defendant, for all the said causes, and for several other defects and imper-

perfections of the said bill of complaint, doth demur in law to the said bill, and abide by the judgment of this honourable court, whether, &c.

A demurrer
to a replica-
tion.

THE said defendants say, they are advised that the replication of the said complainant is insufficient to be rejoined unto; for that the scope of the bill is to be relieved against these defendants, upon supposed articles of agreement, alledged by the said bill to have been made between the said complainant and these defendants, whereby these defendants for, &c. agreed to convey the manor, lands and tenements in the bill mentioned, and all their estate therein, to the repliant, the bill suggesting that these defendants were intitled to the right, in the right of, &c. and that the plaintiffs were intitled by virtue of a settlement; and by the replication of the complainant, alledgeth that some other person, to the use of these defendants, &c. was in the possession of the said manor and premisses, and took the rents thereof by the space of one whole year next before the making of the said articles, which is another title than that which the complainant hath charged and set forth in the said bill; for the complainant doth not pretend any possession in himself, or any under whom he claims in the said bill; and therefore the said replication is a departure from the bill, and insufficient to be rejoined thereunto; and these defendants do demur thereunto, and humbly demand the judgment of this honourable court thereupon, and pray to be dismissed with their costs.

J. M.

A demurrer
to a bill of
review.

THE defendant, by protestation, &c. saith, that by the constant rules of this court, no bill of review ought to be admitted to alter or change matters decreed, but only for error in law appearing in the body of the decree, as it

is

is drawn up and inrolled, or for new matter arisen since the decree, or such matter of which the plaintiff in the bill of review could not have notice at the time of the decree; and therefore, and for that the matters assigned by the bill for cause of reversal of the said decree, are neither any error in law apparent in the body of the decree, nor any such new matter as aforesaid, but are only a pretence of misjudging in matter of form only, and not in point of right; and for that the pretence of the abatement of the suit before the decree past, are only exceptions of formality; and for that the other pretended error in mistaking, in case any such there be, is amendable by a motion; and for that this bill of review contains in it no equity, this defendant doth demur in law thereunto; and humbly insists upon it, that the said decree ought not, for any of the causes assigned by the bill, to be reviewed or reversed, being, for aught appears, just and well grounded; and humbly demands the judgment of this honourable court thereupon, &c.

J. D.

The demurrer, plea, and A demurrer, answer of C. D. one of the plea, and answer, taken by commission. defendants to the bill of complaint of A. B. complainant.

THE said defendant, by protestation, &c. saith, that the scope of the bill being to be relieved, and have and receive therein named, the sum of, &c. for the arrears of, &c. *per annum*, annuity, thereby pretended to be due unto him, as executor of, &c. unto whom it is pretended that, &c. did by indenture, bearing date, &c. grant, convey, and set over the said annuity unto, &c. to hold to him, his executors and assigns, from, &c. then next following,

ing, for and during the term of ninety-nine years, if the said, *Ec.* live so long, payable quarterly, *Ec.* which rent or annuity, it is pretended, was paid by the said, *Ec.* until the year, *Ec.* when the said, *Ec.* died, leaving his estate, alledged to be about, *Ec. per annum*, settled upon trustees, for payment of his debts, and all annuities and incumbrances created by him; and which, by subsequent deeds, pretended to be made between, *Ec.* the said defendants are made liable to pay; and that afterwards, in the year, *Ec.* the said, *Ec.* exhibited his bill here against the defendant, *Ec.* to be relieved against, and to subject the said, *Ec.* to the payment of the said rents and arrears; but that upon the hearing, *viz.* the day and year, *Ec.* the said, *Ec.* was relieved against no more than, *Ec. per annum* of the annuity, ever since the death of the said, *Ec.* which thereby the defendant, *Ec.* was decreed to pay, and free and discharge the said, *Ec.* thereof, this court declaring, as by the now plaintiff's bill is alledged, that the said, *Ec.* should be charged with no greater a proportion than, *Ec. per annum*, ever since the said, *Ec.*'s death; and now the plaintiff's bill further alledging, that afterwards, *viz.* in the year, *Ec.* the said, *Ec.* died, whereby the farther payment of the said annuity ceased; and that then there was due the sum demanded by the complainant's bill for arrears, besides costs; which, by the same bill, the complainant seeks to have, with damages, as likewise the benefit of the said decree, made in the said, *Ec.* his cause to so much of which said bill as is not herein-after pleaded and answered unto, this defendant doth demur in law, and for cause of demurrer shews, that if the decree set forth in the complainant's said bill be such as the said, *Ec.* could recover any thing upon against this defendant, the said com-

complainant ought to have sought his recovery on the same by *scire facias*, and no other cause, he claiming in privity as his executor; but if thereon they could not recover that way, this defendant, for further cause of demurrer further sheweth, that the said complainant ought to do it by law, and no other way; inasmuch as it doth not appear that the consideration for the said grant was any other than natural love and affection, or something else not valuable, which in no case was ever aided or assisted by this honourable court; nor ought the said complainant to have any answer or discovery to that part of their bill, which seeks to know whether there was any such grant of the said annuity, &c. or other security, for securing the arrears thereof, as in the said bill is alledged, or what is become of the same; for that the said complainant hath not made the usual oath, that there was any such grant, &c. and that he had not the same, nor knew what was become thereof, unless the said defendants, or some of them, had the same, and annexed such his oath to his said bill, or filed the same in the office for filing affidavits in this court, which is not done; therefore, and for that, &c. is not made a defendant, who may have paid or otherwise discharged the arrears of the said annuity claimed by the complainant, or by answer might have set forth as much as would have been good discharge to this defendant, this defendant doth demur in law; and demands the judgment of this honourable court, whether he shall be compelled to give any answer to so much of the said bill as is not herein-after pleaded and answered unto. And to the rest of the said bill not herein-before demurred, and herein-after answered unto, this defendant pleads, and for plea saith, that the said, &c. having power to charge his whole estate with,

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with, &c. and to dispose of, &c. with, &c. *per annum*, did by deed indented, under his hand and seal, dated, &c. and made, or mentioned to be made between, &c. declare, among other things, that the said, &c. should be subject to the payment of all his debts in general, whereof the complainant's debt (if there be any such justly due) is the said, &c.'s, and none else, and comes in with that trust; for this defendant doth aver and believe, &c. and for further plea saith, &c. all which matters, so before pleaded, this defendant avers to be true; and to the rest this defendant for answer saith, and denieth that he knows or believes that the said, &c. did ever hold any of the said estate, &c. upon any trust to pay his the said, &c.'s debts, or any of them; and *lastly*, this defendant denies all combination, by the bill laid to his charge, but confesses that the said, &c. is dead, and this defendant his executor, &c. *Without that, that, &c.* J. E.

Note; *These demurrers are to be ingrossed on stamped parchment, (same stamp as answer) are signed by counsel, and are generally put in without oath. The same method is pursued to bring the demurrer to argument as the plea; which see under head of Plea.*

CASES of PRACTICE.

If a demurrer, on the same being argued, is over-ruled, the defendant must pay the plaintiff 5*l.* costs; if the demurrer is allowed, the plaintiff pays the same costs to the defendant; after which the defendant may give notice, and move to dismiss the plaintiff's bill with costs.

If the defendant demurs to the plaintiff's bill, and the same be held ill, the defendant may shew a fresh cause of demurrer at the bar, but

but if the demurrer be held good, the defendant cannot have his costs. 3 Will. Rep. 371.

If the defendant puts in a demurrer which is apprehended will hold good, it is the best way for the plaintiff, if he has a mind to drop proceeding, to move and obtain an order to dismiss his bill with costs, to be taxed by a master; which costs being paid to the defendant, there is an end of the suit: no plaintiff can dismiss his bill, but on payment of costs, to be taxed by the master. If the plaintiff has equity on his side, and intends to proceed, he may apply to the court, either by motion or petition, to amend his bill, on payment of 20*s.* costs; this must be done before the demurrer is set down to be argued, otherwise the plaintiff must pay the defendant the costs he has been at in getting an order to set down the demurrer to be argued, and 20*s.* costs besides, before he can amend his bill; if the same is argued and allowed, 5*l.* costs; in case the demurrer will not hold good, then the plaintiff may petition to set down the demurrer, prepare briefs, &c.

If a demurrer is put in on a slip or mistake in the plaintiff's bill, the plaintiff may obtain an order, on payment of 20*s.* costs, that he may be at liberty to amend his bill at any time after the demurrer put in, and before the same is set down for argument.

If a defendant obstinately insists on his demurrer, and refuses to answer the plaintiff's bill, though prosecuted to a *sequestration* for that purpose, where the court is of opinion that sufficient matter is alledged in the bill to oblige him to answer, and for the court to proceed thereon, the court will decree the matter of the plaintiff's bill to be taken *pro confesso*.

If a plaintiff, on a demurrer put in, pays 40*s.* costs,

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costs, and dismisses his own bill, this is no bar to a new bill. *Chan. Cases*, 208.

If a demurrer to a bill of review is allowed, it may be inrolled; but if disallowed, it shall not be inrolled, to prevent the demurrer's being re-argued. 2 *Vern.* 120.

Where a defendant has demurred, he may assign another cause when the matter comes to be argued, on paying costs; if such cause of demurrer is over-ruled, he ought to pay double costs; but where a defendant has pleaded, and there is no demurrer in court, he cannot demur at bar, though he would pay costs. 1 *Vern.* 78.

A demurrer is considered by the court as dilatory; but a plea is not, being a matter of justice, in bar to the relief sought by the plaintiff's bill. *Vide Vezey*, vol. 1. p. 247.

On demurrer to the plaintiff's bill, if the demurrer be allowed, the plaintiff may amend his bill. *Vide Wm. Pr. Wms.* vol. 2. p. 310.

On time to answer being obtained by the defendant, he cannot put in a demurrer. *Vide Wm. Pr. Wms.* vol. 2. p. 464.

A demurrer lies to a bill for discovery of an assignment of a lease without licence, if it does not expressly wave the forfeiture. *Vide Vezey*, vol. 1. p. 56.

One merely a witness, cannot be made a defendant for a discovery of what he is examinable to, unless interested; but he ought to plead thereto, and support it by his answer, disclaiming interest, and not demur. *Vide Vezey*, vol. 1. p. 426.

There is no saving any thing on a demurrer. *Vide Vezey*, vol. 2. p. 110.

A demurrer can only be brought to what appears on the face of the bill. *Vide Vezey*, vol. 2. p. 245.

The particulars demurred to should be distinguished. *Vide Vezey*, vol. 2. p. 457.

DIREC-

DIRECTIONS for REPLYING,
REJOINING, JOINING in COMMIS-
SION, and also for DISMISSING BILL
before HEARING.

OF R E P L Y I N G.

WHEN the defendant has put in a full answer to the plaintiff's bill, and the plaintiff intends to proceed in the suit, he must forthwith file a replication; these replications are either *general* or *special*.

A *general replication*, is a reply made by the plaintiff to the defendant's answer, whereby he avers and enforces the allegations in his bill, and avoids or denies the matters in the defendant's answer.

A *special replication*, is putting some part of the plaintiff's bill in issue, and so much of the defendant's answer to that part of the bill; and in that case witnesses are to be examined only to those parts of the bill and answer which are so put in issue.

These replications are filed by the plaintiff's clerk in court, on an order obtained for that purpose: the plaintiff has to the end of the *third term exclusive*, after the coming in of the defendant's answer, to file a replication; but if there be a sufficient ground upon the defendant's answer alone, for a decree, without further proof, the plaintiff may proceed to the hearing of the cause, on bill and answer, without filing a replication, or examining witnesses.

When replication must be filed.

If no replication is filed by the plaintiff in three *terms exclusive* after the defendant's answer is come in, the defendant may move the court that the plaintiff's bill may be dismissed with costs, to be taxed by the master.

When bill may be dismissed, if no replication filed.

On

When bill
may be dis-
missed with-
out notice.

On bill being dismissed before the plaintiff has filed a replication, it is not necessary for his solicitor to give the plaintiff's solicitor notice of the motion. It is the practice for his clerk in court to leave a note at the seat of the plaintiff's clerk in court thereof, on which he gets the six-clerks certificate of the time of filing the plaintiff's bill, and coming in of the defendant's answer, on which the defendant's solicitor grounds his motion to dismiss.

When no-
tice is neces-
sary to dis-
miss bill.

After the plaintiff has filed a replication, and he ceases all further prosecutions for *three terms exclusive*, the defendant must procure the six-clerks certificate of the time of filing bill and putting in answer; and on notice of motion given to the plaintiff's solicitor, and affidavit made of such notice, the defendant's solicitor may move to dismiss bill, which will be granted of course.

PRECEDENTS of REPLICATIONS.

The replica-
tion of *A. B.*
complain-
ant, to the
several an-
swers of *C.*
D. defend-
ant.

THIS *repliant*, saving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things, this repliant is, and will be ready to aver and prove, as this honourable court shall award: and humbly prays, as in and by his said bill he hath already prayed, &c.

THE

THE said repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of advantage of exception to, &c. for replication saith, that all and every the matters and things, in and by his said bill of complaint already said, he will aver, justify, maintain and prove to be good, certain, and sufficient in the law, to be answered unto in such manner as the same are therein and thereby set forth and declared; and that the answer of the said defendant is untrue, and altogether insufficient in the law to be by this repliant replied unto, for divers manifest imperfections and incertainties therein contained; the benefit and advantage of exception whereunto being now and at all times saved to this repliant, this repliant, for further replication saith, that the matters contained in the said bill of complaint are altogether relievable in this honourable court; without that, that any other matter or thing in the said defendant's answer contained, material or effectual in the law to be replied unto, and herein and hereby not well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, &c.

A general replication to an answer.

THE said repliant, saving, &c. for replication saith, that his bill of complaint, exhibited in this court against the defendants, and all and every the matters and things therein contained, is and are true and sufficient in the law, to be answered unto, and not devised or exhibited out of malice to the said, &c. with intent to vex or molest him, as in the said answer is set forth; and as to any sum or sums of money, due or owing by this repliant to the said defendant, the repliant, saving and reserving all benefit and advantage of exception, further saith, that

A special replication to an answer.

he

he this repliant doth not owe or is indebted to the said defendant in any sum or sums of money whatsoever; and humbly conceives, and is advised, that if the same allegations of the defendant in his answer were true, the same ought not to preclude this repliant from being relieved in this honourable court, according to the prayer of his this repliant's bill; and this repliant doth aver, and is ready to maintain and prove that, &c. did embezzle and convey away from this repliant, several sums of money, and divers parcels of goods, &c. (*pursuing the substance of the bill*) as in and by the said bill of complaint is most truly alledged; without that, that, &c.

Directions
how to in-
gross and file
replications.

THE replication being ingrossed on parchment, with double 12*d.* stamps, is to be marked near the top thereof, with the day of the month and year when filed, and to be subscribed near the bottom, on the left side, with the surname of the clerk in court who files it, and also the term in which the bill was filed, with the surname of the defendant's fix-clerk; this done, the clerk in court enters it in his cause-book, and then files it with his fix-clerk, acquainting the defendant's clerk in court, by a short note in writing, that he has so done.

Note; They are not signed by counsel; the clerk in court in general does the whole business, for which he charges the solicitor 5*s.* 10*d.* including stamps.

CASES of PRACTICE.

If defendant, in his plea to plaintiff's bill, omits to deny notice, on which plaintiff replies to such plea; all that is necessary for defendant to do, is to prove notice. *Vide Wm. Pr. Wms. vol. 3. p. 94.*

If

If a defendant puts in an answer to a bill brought by an infant, who does not reply to it, such answer must be taken to be true, in regard the defendant, for want of a replication, is deprived of an opportunity of examining witnesses to prove his answer. *Vide Wm. Pr. Wms. vol. 3. p. 237.*

A decree of dismissal may be pleaded in bar to a new bill, though not signed and inrolled. *Vide 1 Vern. 310.*

A replication must be general, except the defendant by his answer offers new matter, which will not be brought into issue by the bill and answer; or where he denies only one, or some few points of the bill. *Vide Ord. Chan. 122.*

If it be needful to prove one, or a few particular points, the plaintiff ought to reply to those points only, on pain of costs; but the court generally orders costs at the hearing, as they think fit. *Anon.*

The replication affirms, and avers the bill to be true; and it is to be short, and must directly and pertinently pursue the substance of the bill, and confess and avoid, or traverse or deny the answer; and it must by no means be a departure from the bill.

A defendant, in his plea of a purchase for a valuable consideration, omits to deny notice; if the plaintiff replies to it, all the defendant has to do, is to prove his plea; and it is not material if the plaintiff proves notice; for it was the plaintiff's own fault that he did not set down the plea to be argued, in which case it would have been over-ruled. *3 Will. Rep. 94.*

A plaintiff having put matters in his replication which were not contained in the bill, and which the plaintiff knew of at the exhibiting the bill; the defendant pleaded, and demurred

to the replication, which the court allowed of. *1 Chan. Rep.* 259.

When the defendant doth demur, or disclaim only to a bill, the plaintiff cannot reply. *Anon.*

Where there is a plea and answer to the same bill, and the plaintiff replies to the plea only, it will be irregular; for the replication must be to the answer, as well as to the plea: and the cause was put off for that irregularity. *Nichol and Wiseman.* *2 Vern.* 46.

If after a plea or demurrer to a special replication allowed, the plaintiff may be admitted to put in a general replication. *Q. et vide 1 Vern.* 351. when it was argued by council that he may; but the court refused to give any opinion.

The plaintiff set down his cause to be heard on bill and answer, and had a decree against the defendant by default; and when the defendant came to shew cause against the decree, it was altered in his favour; the plaintiff petitioned to re-hear the cause, and at the hearing prayed leave to reply to the defendant's answer, and had it, paying costs. *Lord Donnegall and Warr.* *Eq. Ca. Abr.* 43.

In many cases, though the cause requires no witnesses to be examined, yet it may be necessary to reply, whereby the defendant will be put upon proof of his answer, and the plaintiff admitted to prove the matters of his bill; but if the plaintiff reply to an answer, and without rejoinder or rules brings the cause to a hearing, the answer shall be taken wholly true, as if there had been no replication; for the opportunity which the defendant had of proving his answer is taken from him. *2 Chan.* 21.

If the *subpœna* to rejoin be not served, &c. though it be sued out, the cause may be heard on bill and answer. *Ibid.*

If the plaintiff replies to the defendant's answer, but never serves him with a *subpœna* to rejoin, he may rejoin *gratis*, in order to prove his answer, though the plaintiff cannot force him to rejoin without a *subpœna*. *Moseley* 123. *pl. 77. Anon*

When witnesses have been examined, and no replication, the court, at the hearing, or even after a decree, will order a replication to be filed, *nunc pro tunc*. A cause is at issue by the replication, and a rejoinder is never actually filed. *Moseley* 296.

Note. It is now the course of the court, that the plaintiff be allowed to the end of the third term after coming in of the defendant's answer, to file his replication, exclusive of the term the answer is filed in. *Manuscript Cases of Practice*.

It is the common practice for the plaintiff (after he has ceased prosecution for three terms after replication filed, and the defendant moves to dismiss the bill) to pray leave of the court to withdraw his replication and amend his bill; by which means the suit is retained, to the great vexation and delay of the defendant (as the lord chancellor was pleased to declare lately;) so that we may perhaps see some alteration in this point of practice, his lordship having refused to retain the plaintiff's bill upon those terms.

If a plaintiff obtains an order to amend his bill, which he does not do in a reasonable time; yet this shall not be such a proceeding as to keep his bill on foot, and hinder its being dismissed for want of prosecution.

Note. If a bill be dismissed for want of a replication, or other proceeding, yet the court, on application, often orders that the bill be retained on payment of costs out of purse; in which case the defendant may apply to have such order discharged, especially if the plaintiff has been guilty of delay.

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But after joining in commission (and before the names are struck) the defendant hath no method to get rid of his cause, but by obtaining a commission ex parte; and after the depositions are returned, to get a rule entered to pass publication, and the cause set down and heard at his own request. And when your witnesses live in town, or within ten miles thereof, a rule must be entered to produce witnesses, and interrogatories must be exhibited in the examiner's office, for examination of witnesses there.

On dismissing a bill before replication, it is not necessary to serve a notice of motion; but it is usual only for the clerk in court to leave a note at the seat of the adverse clerk, with himself, or his clerk or agent there, that he will dismiss the bill for want of prosecution, and so get the fix-clerk's certificate, on which the motion is grounded, and moved of course without any affidavit.

After a replication put in, if the plaintiff ceases all manner of prosecution for three terms exclusive, the bill may, upon the fix-clerk's certificate, and giving notice of motion, and affidavit thereof filed, (if not defended by the plaintiff's counsel,) be dismissed.

Note. A plaintiff may, and often does, dismiss his own bill with costs to be taxed, after appearance with full cost to be taxed, by the statute for amendment of the laws.

If a bill be preferred for a matter or sum beneath the dignity of the court, it may be dismissed as well upon motion as demurrer. *Com. Rep.* 715. *pl.* 278. *Moseley* 356.

Note; If a bill is exhibited in any person's name, without his privity, the court, upon shewing it, will dismiss the bill, at least as to him, if there be any more plaintiffs; and to that end he may either come into court and disclaim the suit, or give power to counsel, in writing, to move that it may be

be dismissed, with costs against the person that exhibited the bill.

The warrant of the counsel, after it is read, is taken and kept by the register.

If the bill be exhibited in the wife's name against the husband, upon affidavit that she knew nothing of it, nor consented to it, it may be dismissed on motion.

In case of a dismissal for want of prosecution (and not on the merits of the cause) on motion, and excuse for the delay, and paying costs out of purse, or to be taxed, of the dismissal of the plaintiff's bill, by special order it may be retained, or he may have leave given him to exhibit a new bill; the doing of which is merely at the discretion of the court. But, in this case, he ought to proceed with effect in his cause; in which, if he fails, it will come a second time to be dismissed for want of prosecution, with costs to be taxed by a master.

Though this proceeding of dismissing bills for want of prosecution, with costs, is laid down as an established rule of the court, yet cases may be found where it will not hold good. As, for example; where a bill is filed against several defendants, it often falls out, that one defendant answers in due time, when at the same time another defendant is prosecuted for want of an answer, and the plaintiff cannot proceed in his cause until all the answers are in; therefore whenever this case happens, and where it appears to the court that the plaintiff is going on with his suit, and prosecuting for want of an answer, it has always been allowed as a good cause to discharge the order of one single defendant, under pretence of dismissing the bill for want of prosecution.

A plaintiff may either make a general election to proceed here, or at law, or a special election, to proceed for part here, and the o-

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ther part at law ; but the court will judge of the reasonableness of that special election. *Gilb. Rep. in Eq. 183.*

A dismissal upon an election to proceed at law is not peremptory, but the plaintiff may, after he has failed at law, bring a new bill. *2 Vern. Ca. 24. Countess of Plymouth v. Bladen.*

Where the plaintiff sues both at law and in equity for the same thing, he will be put to make his election in which court he will proceed, but he needs not make such election till the defendant has answered. *3 Will. Rep. 90. Jones v. Earl of Strafford.*

An order for the plaintiff to make his election was discharged on motion, because the defendant had pleaded the statute of limitation, and the plea had not been argued. *Mosely 210. pl. 119.*

The order for making an election recites only, that the plaintiff prosecutes the defendant at law and in equity for one and the same matter, so that the defendant is doubly vexed ; wherefore it provides, that the plaintiff, his clerk in court, and attorney at law, having notice of the order, within eight days after such notice, make his election in which court he will proceed ; and if he elects to proceed in this court, then the proceedings at law are by that order to be stayed by injunction. But if the plaintiff shall elect to proceed at law, or in default of such election by the time aforesaid, his bill is to be dismissed with costs.

Note. If one makes a special election to proceed at law as to part, and in equity as to other part ; with regard to what the plaintiff in equity elects to proceed at law, his bill ought to be dismissed with costs. *3 Will Rep. 90.*

It is a doubt, whether after a plea and demurrer to a special replication, the plaintiff may be

be admitted to put in a general replication.
Vide 1 Vern. 351.

If witnesses have been examined, and no replication filed, the court, on the hearing, or even after a decree, will order a replication to be filed *nunc pro tunc*. *Moseley* 296

OF REJOINING.

THE plaintiff having filed his replication to the defendant's answer in term, he may sue out a *subpœna* to *rejoin* against the defendant, returnable at a day certain in term time; and may, if he chuses, serve the defendant therewith; though this is seldom done but where the defendant lives in town, and can be easily served with such process; for the most common practice in such case is to apply to the court by motion or petition, (*see head of Petitions,*) that a *subpœna* to *rejoin*, returnable immediately, may issue against the defendant; and that service thereof on the defendant's clerk in court may be deemed good service on the defendant. This mode of application is a matter of course, and always granted.

In the motion or petition, it is added, that When in a the plaintiff may be at liberty to take out a com- country mission to examine witnesses, and that the defen- cause. dant may join in commission, and strike commissioners names in four days, after notice thereof given to the defendant's clerk in court; or, in default of so doing, that the plaintiff may be at liberty to have a commission to examine witnesses directed to his own commissioners.

The order being drawn up, passed and entered, you serve a copy thereof on the defendant's clerk in court, and then make a note for the office, which must be carried with the order to the *subpœna-office* to authorize the officer to

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make out the *subpœna* ; which, when obtained, you serve on the defendant's clerk or agent, at his seat in the fix-clerk's office.

If from the nature of the suit depending between the parties, it may not be necessary to examine any witnesses, yet it is held best for the plaintiff *to reply*, in order to put the defendant on a proof of his answer. If the plaintiff *replies*, and without *rejoinder* brings the cause to a hearing, the defendant's answer will be taken as wholly true as if no *replication* had been filed ; for the opportunity the defendant had of proving his answer, is, by such step of the plaintiff's, taken from him.

Note. *It is here necessary to remark, that there can be no order granted to pass publication, or for setting down the cause to be heard, without serving the defendant's clerk in court with the notice of motion, and obtaining an order for that purpose.*

The present practice of bringing a suit to a hearing.

The court now very seldom, but in extraordinary cases, grants an order to pass publication, or to set down the cause to be heard the usual way, is to pass publication (by rules) which is transacted between the respective clerks in court ; and, after publication is passed, the plaintiff may of course set down the cause for a hearing the succeeding term after publication has passed.

How to obtain a commission to examine witnesses where defendant will not rejoin gratis.

When the plaintiff intends to go to commission to examine witnesses, he must serve the defendant with a *subpœna to rejoin*, or get an order to serve defendant's clerk in court with a *subpœna to rejoin* returnable immediately, (except the defendant will rejoin *gratis*) before he can obtain his commission to examine, &c. and, on return of *subpœna*, the plaintiff may (*on order obtained for that purpose*) oblige the defendant to join in commission, and strike out commissioners names ; or, if the defendant neglects

so to do, the plaintiff may take out a commission for examining witnesses *ex parte*.

CASES of PRACTICE.

If the *subpœna to rejoin* be not served, though it be sued out, the cause may notwithstanding be heard by bill and answer. *Anon.*

If the plaintiff replies to the defendant's answer, but never serves the defendant with a *subpœna to rejoin*, the defendant may rejoin *gratis*, in order to prove his answer, though the plaintiff cannot force the defendant to rejoin without first serving him with a *subpœna*. *Moseley* 123. pl. 77.

A cause (by the practice of the court) is considered at issue by the replication, and a rejoinder is never actually filed. *Moseley* 296.

Of JOINING in COMMISSION.

THE party's clerk in court (whether plaintiff or defendant) entitled to the commission for examining witnesses, applies to the clerk in court on the other side to join in commission; which is done by them in the following manner, *viz.*

1st, He who has the carriage of the commission, names a commissioner, then the other side does the same, till *four* on each side are alternately chosen; which done, the respective clerks in court enter the same in their commission-book. When each has advised with his client, they strike out two of the four names on each side in the following manner: 1st, He who has the carriage of the commission strikes out one of them named by the adverse party, and then the other does the same, till the *eight* are reduced to

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four, who are the commissioners between the parties.

If the defendant joins in commission, and afterwards refuses to strike commissioners names, the court, on petition, will strike out such two of them as they think proper, the plaintiff's clerk in court being at liberty, notwithstanding the defendant's clerk in court refuses to strike plaintiff's commissioners names, to strike out which two of the defendant's commissioners names he shall think fit, and the commission shall go to such of the four commissioners as are left standing.

Qualifications of commissioners, between the parties.

The commissioners ought to be indifferent persons; and if after their names are struck, one of the parties find, that the adverse party's commissioner, or one of them, is of kin or counsel, or solicitor for the party, he may, by motion or petition, complain thereof to the court, who will order such party to name two other indifferent commissioners, instead of that commissioner so complained against, and the other side to strike out one of those two so named.

Of EXAMINING WITNESSES.

In a town cause.

THE defendant being served with a *subpoena to rejoin*, he may proceed to examine his witnesses in the same manner as the plaintiff; if he does not, the plaintiff, after having examined one or two witnesses on his part, orders his clerk in court to give a rule for the defendant to produce witnesses, and the plaintiff's clerk in court gives the defendant's clerk in court notice thereof, which is immediately transmitted to the defendant's solicitor.

These witnesses are examined on interrogatories, either before an examiner of the court, or by commissioners in the country. The interrogatories

rogatories must contain questions apt and pertinent to the matters in issue between the parties, and must be read to them when they come to be examined; and the examiner must examine the witness to one interrogatory at a time, so that the witness may not be confused in his recollection and testimony.

On a witness attending to be examined, a clerk from the six-clerks office attends him to the *publick office in Symond's-inn* to be sworn before a master, and then carries him to the seat of the adverse clerk in court, with a note of his name and place of abode, in order to give the adverse party an opportunity to cross-examine such his witness, if he thinks proper. The clerk in court, receiving such note, transmits the same to his client; who, if he would have the witness cross-examined, informs his clerk in court thereof, on which the witness is detained at the examiner's office for that purpose.

The common practice in examining witnesses is, that after the witness is sworn, the examiner appoints a future day for the witness to attend him to be examined. In order to prevent a witness being examined privately, the adverse party may stick up a note in the *examiner's office in the Roll's Yard, Chancery-lane*, That if such a one (*being the witness he has received a note is intended to be examined*) comes to be examined in such a cause, let him be cross-examined; or the solicitor may give such instructions to his examiner.

When you have reason to fear a witness will not voluntarily come to be examined, you must sue out a *subpœna ad test.* which, when obtained, you serve such witness with, and at the same time give him *1 s.* and then if he refuses, or does not attend to be examined, make an *affidavit* of the fact, and file it at the proper office, and then apply to your examining clerk for his certificate, *that the witness is not sworn to the said*

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interrogatories; on which you see counsel, at move the court for an order, that such witness do, in *four days* after service of the order, attend and be sworn and examined; or, in default, that he stand committed to the *Fleet* for a contempt; which the court will grant of course.

Note. *The same method is to be taken, when a witness, who is sworn to the interrogatories, afterwards refuses to be examined thereto.*

When the witness is willing to attend and be examined without a *subpoena*, you appoint a time with your examiner for his attendance, and carry him to the examiner's office for that purpose.

When the plaintiff has examined all his witnesses in the cause, his solicitor directs his clerk in court to give a rule for the defendant to shew cause why publication should not pass. These are *eight day* rules; and whether plaintiff examines any witnesses or not, it is usual to give such rules (as he may give both rules together) to prevent the adverse party from examining his witnesses. On these rules, if the other party does not obtain an order to enlarge publication, the same will pass of course.

When the adverse party has witnesses to examine in the cause, either in town or country, and is straitened in time, according to the rules of the court, he may, by petition or motion of court, obtain an order for staying or enlarging the time for passing publication of the depositions, which the court never denies, on reasonable cause being shewn for that purpose, *but so as not to hinder the plaintiff from setting down his cause*; and if, by neglect of the solicitor or clerk in court, publication has passed, yet on an *affidavit* made by the clerk in court, and solicitor, and the party himself, *that they have not seen, read, or heard read, the deposition taken by the adverse party*, the court will grant an order for him to examine his witnesses. **PH**





